NORTHERN TERRITORY OF AUSTRALIA

CARE AND PROTECTION OF CHILDREN ACT

As in force at 12 April 2017

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 12 April 2017

CARE AND PROTECTION OF CHILDREN ACT

An Act about the care and protection of children, and for related purposes

Chapter 1 Introduction

Part 1.1 Preliminary matters

1 Short title

This Act may be cited as the *Care and Protection of Children Act*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Part 1.2 What this Act is about

4 Objects of Act

The objects of this Act are:

(a) to promote the wellbeing of children, including:

(i) to protect children from harm and exploitation; and

(ii) to maximise the opportunities for children to realise their full potential; and

(b) to assist families to achieve the object in paragraph (a); and

(c) to ensure anyone having responsibilities for children has regard to the objects in paragraphs (a) and (b) in fulfilling those responsibilities.

5 Overview

To achieve those objects, this Act provides for the following:

(a) measures for safeguarding the wellbeing of children (see Chapter 2), in particular:

(i) mandatory reporting requirements for children at risk of harm or exploitation (see Part 2.1, Division 3); and

(ii) the powers of the Minister, the CEO and other officers to take actions for the wellbeing of children (see Parts 2.1 and 2.2); and

(iii) the powers of the Court to make orders for the wellbeing of children (see Parts 2.3 and 2.4);

(b) measures for the prevention of harm and exploitation of children (see Chapter 3), in particular:

(i) screening for child-related employment (see Part 3.1); and

(ii) restriction of child employment (see Part 3.2); and

(iii) prevention of child deaths (see Part 3.3);

(d) the establishment of a framework for sharing information about children, review teams and other administrative measures (see Chapter 5).

Part 1.3 Principles underlying this Act

6 Principles

(1) The underlying principles of this Act are set out in sections 7 to 12.

(2) Anyone exercising a power or performing a function under this Act must, as far as practicable, uphold those principles.

(3) However, those principles do not affect the operation of any law in force in the Territory.

7 Responsibility of Territory Government

The Northern Territory Government has responsibility for promoting and safeguarding the wellbeing of children and supporting families in fulfilling their role in relation to children.

8 Role of family

(1) The family of a child has the primary responsibility for the care, upbringing and development of the child.

(2) In fulfilling that responsibility, the family should be able to bring up the child in any language or tradition and foster in the child any cultural, ethnic or religious values.

(3) A child may be removed from the child's family only if there is no other reasonable way to safeguard the wellbeing of the child.

(4) As far as practicable, and consistent with section 10, if a child is removed from the child's family:

(a) contact between the child and the family should be encouraged and supported; and

(b) the child should eventually be returned to the family.

9 Treating child with respect

(1) Each child is a valued member of society and is entitled to be treated in a way that respects the child's dignity and privacy.

(2) Decisions involving a child should be made:

(a) promptly having regard to the child's circumstances; and

(b) in a way that is consistent with the cultural, ethnic and religious values and traditions relevant to the child; and

(c) with the informed participation of the child, the child's family and other people who are significant in the child's life.

10 Best interests of child

(1) When a decision involving a child is made, the best interests of the child are the paramount concern.

(2) Without limiting subsection (1), consideration should be given to the following matters in determining the best interests of a child:

(a) the need to protect the child from harm and exploitation;

(b) the capacity and willingness of the child's parents or other family members to care for the child;

(c) the nature of the child's relationship with the child's family and other persons who are significant in the child's life;

(d) the wishes and views of the child, having regard to the maturity and understanding of the child;

(e) the child's need for permanency in the child's living arrangements;

(f) the child's need for stable and nurturing relationships;

(g) the child's physical, emotional, intellectual, spiritual, developmental and educational needs;

(h) the child's age, maturity, gender, sexuality and cultural, ethnic and religious backgrounds;

(i) other special characteristics of the child;

(j) the likely effect on the child of any changes in the child's circumstances.

11 Child participation

When a decision involving a child is made:

(a) the child:

(i) should be given adequate information and explanation in a way that the child can understand; and

(ii) should be given the opportunity to respond to the proposed decision; and

(iii) should be given the opportunity to express the child's wishes and views freely; and

(iv) should be given assistance in expressing those wishes and views; and

(b) those wishes and views should be taken into account, having regard to the child's maturity and understanding.

12 Aboriginal children

(1) Kinship groups, representative organisations and communities of Aboriginal people have a major role, through self-determination, in promoting the wellbeing of Aboriginal children.

(2) In particular, a kinship group, representative organisation or community of Aboriginal people nominated by an Aboriginal child's family should be able to participate in the making of a decision involving the child.

(3) An Aboriginal child should, as far as practicable, be placed with a person in the following order of priority:

(a) a member of the child's family;

(b) an Aboriginal person in the child's community in accordance with local community practice;

(c) any other Aboriginal person;

(d) a person who:

(i) is not an Aboriginal person; but

(ii) in the CEO's opinion, is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the culture of the child's community (and, if possible, ongoing contact with the child's family).

(4) In addition, an Aboriginal child should, as far as practicable, be placed in close proximity to the child's family and community.

Part 1.4 Interpretation

13 Definitions

In this Act:

Aboriginal means:

(a) a descendant of the Aboriginal people of Australia; or

(b) a descendant of the indigenous inhabitants of the Torres Strait Islands.

Aboriginal customary law means:

(a) customary law of the Aboriginal people of Australia; or

(b) customary law of the indigenous inhabitants of the Torres Strait Islands.

Aboriginal tradition means:

(a) tradition of the Aboriginal people of Australia; or

(b) tradition of the indigenous inhabitants of the Torres Strait Islands.

administrative guidelines means:

(a) for the making of a decision by the Authority – administrative guidelines made under section 191(1); or

(b) for the operation of Part 5.1A – administrative guidelines made under section 293H.

adult means:

(a) a person at least 18 years of age; or

(b) a person apparently at least 18 years of age if the person's age cannot be proved.

advisor means an advisor to the Committee mentioned in section 215.

approved form means a form approved by the CEO under section 302.

assessment order means an assessment order made under section 115(a) or (b).

authorised officer, see section 304(1).

Authority means the Screening Authority established by section 196(1).

candidate, see section 188(1).

care plan, see section 70(2).

carer, see section 78(1).

CEO means the Chief Executive Officer of the Department.

child means:

(a) a person less than 18 years of age; or

(b) a person apparently less than 18 years of age if the person's age cannot be proved.

Child Deaths Register means the Child Deaths Register established by section 212(1).

child deaths, see section 208.

child is in the CEO's care, see section 67(1).

child is in need of protection, see section 20.

child leaves the CEO's care, see section 67(2).

child protection order, for Part 2.4, see section 153.

child protection proceeding, for Part 2.4, see section 153.

child-related authority, see section 37(1).

child-related employment, see section 185.

child-related services means services that:

(a) are provided to one or more of the following:

(i) a child (whether or not in need of protection) or young person who has left the CEO's care;

(ii) someone who is related to or is a family member of the child or person;

(iii) an organisation representing the interests of the child or person;

(iv) an organisation representing a community of which the child or person is a member; and

(b) are in the nature of social services that relate to one or more of the following:

(i) the prevention of harm to, or exploitation of, a child;

(ii) the protection of a child;

(iii) services for the care or support of a child and the child's family (including domestic support services);

(iv) a placement arrangement;

(v) medical or other health-related services;

(vi) information and advisory services;

(vii) counselling services;

(viii) advocacy services;

(ix) mediation services.

child-related work, see section 185(2).

child welfare law, for Part 2.4, see section 153.

Children's Court, for Part 2.4, see section 153.

clearance notice means a clearance notice issued under section 189(3)(a).

Commissioner, see section 6 of the *Children's Commissioner Act*.

Committee means the Child Deaths Review and Prevention Committee established by section 209(1).

contact includes:

(a) any form of physical contact; and

(b) any form of oral communication, whether face-to-face or by other means; and

(c) any form of written communication.

Convenor means the person holding or occupying the office of Convenor of the Committee mentioned in section 209(4).

Court means the Local Court.

Court order, see section 88(1).

Court proceedings, see section 88(1).

criminal history means a criminal record as defined in section 3(1) of the *Criminal Records (Spent Convictions) Act*.

customary law or tradition includes:

(a) Aboriginal customary law; and

(b) Aboriginal tradition.

daily care and control, of a child, see section 21.

daily care and control direction, see section 123(1)(b).

Department means the Agency administering this Act.

engage, for child-related employment, see sections 185 and 186.

exploitation, see section 16.

family, see section 19.

harm, see section 15.

health practitioner means a person registered under the Health Practitioner Regulation National Law to practise in a health profession (other than as a student).

health services, see section 4(1) of the *Health and Community Services Complaints Act*.

holder means the person to whom a licence is granted.

home order, for Part 2.4, see section 153.

home proceeding, for Part 2.4, see section 153.

hospital includes:

(a) a hospital as defined in section 5 of the *Medical Services Act*; and

(b) a private hospital as defined in section 4A of the *Private Hospitals Act*.

identity card means an identity card issued under section 305.

information about a child, for Part 5.1A, see section 293B.

information sharing authority, for Part 5.1A, see section 293C.

interim care plan, see section 76(2).

interim order, for Part 2.4, see section 153.

interstate law, for Part 2.4, see section 153.

interstate officer, for Part 2.4, see section 153.

long-term parental responsibility direction, see section 123(1)(d).

mediation conference means:

(a) for a conference arranged by the CEO – see section 49;

(b) for a conference ordered by the Court – see section 127 or 139(1)(e).

member means a member of the Committee mentioned in section 209.

misleading information includes information that is misleading because the information:

(a) does not contain relevant information; or

(b) contains misinformation.

operator of child-related services means a person who controls an operation for the provision of child-related services.

parent:

(a) for Part 2.4, see section 153; or

(b) otherwise – see section 17.

parental responsibility, see section 22.

participating State, for Part 2.4, see section 153.

permanent care order, see section 137A.

placement arrangement, see section 78.

protection order means an order made under section 128(1).

provisional protection, see section 51.

regulation means a regulation made under this Act.

relative, see section 18.

school, see section 5 of the *Education Act*.

sending State, for Part 2.4, see section 153.

service provider, in relation to a vulnerable child, see section 6 of the *Children's Commissioner Act*.

sexual offence, see section 3 of the *Sexual Offences (Evidence and Procedure) Act*.

short-term parental responsibility direction, see section 123(1)(c).

State, for Part 2.4, see section 153.

supervision direction, see section 123(1)(a).

team means a review team established under section 295.

temporary placement arrangement means an arrangement mentioned in section 46.

temporary protection order means a temporary protection order made under section 105.

underlying principles of this Act, see section 6.

vulnerable child, see section 7 of the *Children's Commissioner Act*.

wellbeing of a child, see section 14.

working day:

(a) for Part 2.4, see section 153; or

(b) otherwise – means a day that is not a Saturday, Sunday or public holiday as defined in the *Public Holidays Act*.

young person who has left the CEO's care, see section 68.

Note for section 13

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

14 Wellbeing of child

The wellbeing of a child includes the child's physical, psychological and emotional wellbeing.

15 Harm to child

(1) Harm to a child is any significant detrimental effect caused by any act, omission or circumstance on:

(a) the physical, psychological or emotional wellbeing of the child; or

(b) the physical, psychological or emotional development of the child.

(2) Without limiting subsection (1), harm can be caused by the following:

(a) physical, psychological or emotional abuse or neglect of the child;

(b) sexual abuse or other exploitation of the child;

(c) exposure of the child to physical violence.

Example

A child witnessing violence between the child's parents at home.

16 Exploitation of child

(1) Exploitation of a child includes sexual and any other forms of exploitation of the child.

(2) Without limiting subsection (1), sexual exploitation of a child includes:

(a) sexual abuse of the child; and

(b) involving the child as a participant or spectator in any of the following:

(i) an act of a sexual nature;

(ii) prostitution;

(iii) a pornographic performance.

17 Parent of child

(1) A parent of a child is the child's father, mother or any other person who has parental responsibility for the child.

(2) A parent of an Aboriginal child includes a person who is regarded as a parent of the child under Aboriginal customary law or Aboriginal tradition.

(3) However, any of the following must not be regarded as a parent of a child:

(a) the CEO;

(b) a person who has responsibility for the care of the child only on a temporary basis;

(c) a person, such as a teacher or childcare worker, who has responsibility in relation to the child because of a professional relationship.

(4) To avoid doubt, a reference in this Act to the parents of a child includes a reference to the parent of a child who has only one parent.

18 Relatives of child

(1) A relative of a child is any of the following:

(a) a parent, grandparent or any other ancestor of the child;

(b) a step-parent of the child;

(c) a sibling of the child;

(d) an uncle or aunt of the child;

(e) a cousin of the child;

(f) a person who is related to the child in accordance with:

(i) any customary law or tradition applicable to the child; or

(ii) any contemporary custom or practice.

(2) To avoid doubt, a relationship covered by subsection (1) may include a relationship that arises through common ancestry, adoption, marriage, de facto relationship or any customary law or tradition.

19 Family of child

The family of a child includes:

(a) the relatives of the child; and

(b) the members of the extended family of the child in accordance with:

(i) any customary law or tradition applicable to the child; or

(ii) any contemporary custom or practice; and

(c) anyone who is closely associated with the child or another family member of the child.

20 When child is in need of care and protection

A child is in need of care and protection (***child is in need of protection***) if:

(a) the child has suffered or is likely to suffer harm or exploitation because of an act or omission of a parent of the child; or

(b) the child is abandoned and no family member of the child is willing and able to care for the child; or

(c) the parents of the child are dead or unable or unwilling to care for the child and no other family member of the child is able and willing to do so; or

(d) the child is not under the control of any person and is engaged in conduct that causes or is likely to cause harm to the child or other persons.

21 Daily care and control of child

A person has daily care and control of a child if the person is entitled to exercise all the powers and rights, and has all the responsibilities, for the day-to-day care and control of the child.

22 Parental responsibility for child

(1) A person has parental responsibility for a child if the person is entitled to exercise all the powers and rights, and has all the responsibilities, for the child that would ordinarily be vested in the parents of the child.

(2) Without limiting subsection (1), a person who has parental responsibility for a child:

(a) has daily care and control of the child; and

(b) is entitled to exercise all the powers and rights, and has all the responsibilities, in relation to the long-term care and development of the child.

(3) To avoid doubt, a reference in this Act to a person who has parental responsibility for a child includes a person who has been given parental responsibility for the child under a law of another jurisdiction.

23 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 23

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Chapter 2 Safeguarding wellbeing of children

Part 2.1 General obligations and powers

Division 1 Preliminary matters

24 Objects of Part

The objects of this Part are:

(a) to oblige members of the public to report cases of children at risk of harm or exploitation; and

(b) to ensure the Minister, the CEO and authorised officers have the power to take appropriate actions to:

(i) protect children who are in need of protection; and

(ii) promote the wellbeing of children generally; and

(iii) promote the wellbeing of young persons who have left the CEO's care.

Note

A child who is the subject of the exercise of a power under this Chapter may make a complaint to the Children's Commissioner about certain matters under the Children's Commissioner Act.

Division 2 Minister's powers

25 Minister's powers

(1) The Minister may do anything for the adoption of a cooperative approach between the following in relation to the care and protection of children:

(a) families;

(b) Agencies and any other public authorities;

(c) any other individuals or organisations (including, for example, community groups, business entities and any other bodies).

(2) The Minister may make policy guidelines for the exercise of a power or performance of a function by the CEO under this Act.

(3) The Minister must, by *Gazette* notice, give notice about the making of the guidelines as soon as practicable after they are made.

(4) The CEO must have regard to the guidelines in the exercise of the power or performance of the function.

(5) The Minister may give direction to the CEO in relation to the exercise of a power or performance of a function by the CEO under this Act.

(6) The CEO must comply with the direction.

(7) An exercise of the Minister's power under this section must be consistent with this Act.

Division 3 General obligations about reporting

26 Reporting obligations

(1) A person is guilty of an offence if the person:

(a) believes, on reasonable grounds, any of the following:

(i) a child has suffered or is likely to suffer harm or exploitation;

(ii) a child aged less than 14 years has been or is likely to be a victim of a sexual offence;

(iii) a child has been or is likely to be a victim of an offence against section 128 of the Criminal Code; and

(b) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer:

(i) that belief; and

(ii) any knowledge of the person forming the grounds for that belief; and

(iii) any factual circumstances on which that knowledge is based.

Maximum penalty: 200 penalty units.

Note for subsection (1)(a)(iii)

The victim of an offence against section 128 of the Criminal Code is a child who is of or over the age of 16 years and under the offender's special care as mentioned in that section (for example, because the offender is a step-parent or teacher of the victim).

(2) A person is guilty of an offence if the person:

(a) is a health practitioner or someone who performs work of a kind that is prescribed by regulation; and

(b) believes, on reasonable grounds:

(i) that a child aged at least 14 years (but less than 16 years) has been or is likely to be a victim of a sexual offence; and

(ii) that the difference in age between the child and alleged sexual offender is more than 2 years; and

(c) does not, as soon as possible after forming that belief, report (orally or in writing) to the CEO or a police officer:

(i) that belief; and

(ii) any knowledge of the person forming the grounds for that belief; and

(iii) any factual circumstances on which that knowledge is based.

Maximum penalty: 200 penalty units.

Example for subsection (2)(b)(ii)

A health practitioner believes, on reasonable grounds, that a child who has just turned 14 is likely to be a victim of a sexual offence committed by someone aged 16 and a half.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

(4) This section has effect despite any other provision in this Act or another law of the Territory.

27 Protection of person making report

(1) A person acting in good faith in making a report under section 26 is not civilly or criminally liable, or in breach of any professional code of conduct:

(a) for making the report; or

(b) for disclosing any information in the report.

(2) In any proceedings before a court, except with the court's leave:

(a) the report or evidence of its contents is not admissible; and

(b) a person cannot be compelled to give evidence, or to produce a record, about the report or the identity of the maker of the report.

(3) The leave may be granted only if:

(a) the report, evidence or record is of critical importance to the proceedings; and

(b) failure to grant the leave would prejudice the proper administration of justice.

28 What happens when police officer receives report

(1) A police officer must, as soon as practicable after receiving a report under section 26, notify the CEO about the receipt of the report.

(2) The notification must include details in the report.

29 What happens when CEO receives report or notification

(1) The CEO must record the receipt of a report under section 26 or a notification about a report under section 28(1) in relation to a child.

(2) The CEO may inform the following persons about actions that the CEO has taken or proposes to take for the child:

(a) the person who made the report;

(b) the police officer who gave the notification.

30 Duties of other persons

(1) Each of the following persons must ensure everyone providing services for a child under the person's control or direction is aware of the obligations under section 26(1):

(a) an operator of child-related services;

(b) an approved provider of an education and care service operated under the *Education and Care Services National Law (NT)*;

(c) the person in charge of a hospital or any other facility for health services;

(d) the person in charge of a school or any other educational institution.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Each person who engages another person in child-related employment must ensure the other person is aware of the obligations under section 26(1).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2A) Each person who engages another person to perform work as a health practitioner or work of a kind prescribed under section 26(2)(a) must ensure the other person is aware of the obligations under section 26(1) and (2).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(3) It is a defence to a prosecution for an offence against subsection (1), (2) or (2A) if the defendant has a reasonable excuse.

Division 4 Powers to inquire or investigate

31 Object of Division

The object of this Division is to ensure the CEO and police officers have the power to take steps to determine whether the wellbeing of a child is at risk.

32 CEO may make inquiries

(1) The CEO may make inquiries about a child if the CEO receives information that raises concerns about the child's wellbeing.

Note

The CEO may therefore exercise this power whether or not as a result of a report under section 26 or a notification under section 28(1).

(2) On completing the inquiries, the CEO must decide whether any further action should be taken for the child under this Part or Part 2.3.

33 Police may make inquiries

(1) A police officer may make inquiries about a child if the officer receives information that raises concerns about the child's wellbeing.

(2) Within 24 hours after completing the inquiries, the officer must give a report of the inquiries to the CEO.

34 Giving information for inquiries

(1) This section applies if inquiries about a child are being made under section 32 or 33 by the CEO or a police officer (the ***inquiring officer***).

(2) The inquiring officer may, for the inquiries, request any of the following persons to give the officer specified information about the child or another person (for example, a family member of the child) that directly or indirectly relates to the inquiry:

(aa) a person whom the officer reasonably believes has the specified information;

(a) a parent or another family member of the child;

(b) a police officer;

(c) a person employed or engaged by an Agency;

(d) an operator of child-related services;

(e) an approved provider of an education and care service operated under the *Education and Care Services National Law (NT)*;

(f) a health practitioner;

(g) the person in charge of a hospital or any other facility for health services;

(h) the person in charge of a school or any other educational institution;

(i) a service provider for a vulnerable child;

(j) any other person prescribed by regulation.

(3) The person must comply with the request.

Maximum penalty: 200 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if:

(a) the defendant has a reasonable excuse; or

(b) the Commissioner of Police certifies in writing that compliance with the request would:

(i) prejudice the investigation of any unlawful conduct; or

(ii) disclose a confidential source of information in relation to the administration of law; or

(iii) prejudice the effectiveness of a method or procedure in relation to the administration of law; or

(iv) facilitate a person's escape from lawful custody; or

(v) endanger the safety of a person.

35 CEO's power to investigate

(1) The CEO may initiate an investigation to determine whether a child is in need of protection.

(2) The CEO may do so only if the CEO believes on reasonable grounds the child might be in need of protection (whether or not inquiries about the child have been made under section 32 or 33).

(3) The investigation must be conducted by an authorised officer.

(4) On completing the investigation, the CEO must decide whether any further action should be taken for the child under this Part or Part 2.3.

36 Police officer's power to investigate

(1) A police officer may initiate an investigation to determine whether a child is in need of protection.

(2) The police officer may do so only if the officer believes on reasonable grounds the child might be in need of protection (whether or not inquiries about the child have been made under section 32 or 33).

(3) The investigation must be conducted by that or another police officer.

(4) Within 24 hours after completing the investigation, the officer who conducted the investigation must give a report of the investigation to the CEO.

37 Access to child

(1) For an investigation about a child under section 35 or 36, the officer conducting the investigation may request a person mentioned in section 34(2)(b) to (j) (***child-related authority***) to allow the officer:

(a) to have contact with the child; and

(b) to do so without informing the parents of the child.

(2) The officer may do so only if the officer reasonably believes:

(a) not to inform the parents is in the best interests of the child; or

(b) to inform the parents might compromise the investigation.

(3) The person must comply with the request.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(4) It is a defence to a prosecution for an offence against subsection (3) if:

(a) the defendant has a reasonable excuse; or

(b) the child indicated that he or she did not wish to have the contact.

(5) The officer must inform at least one of the parents of the contact and the reasons for it as soon as practicable after it has occurred.

(6) However, subsection (5) does not apply if:

(a) the officer reasonably believes:

(i) a person may be charged with an offence in relation to the child; and

(ii) complying with the subsection might compromise the investigation of the offence; or

(b) the officer reasonably believes complying with the subsection may expose the child to harm or exploitation; or

(c) the child has requested that the parents not be informed about the contact and the officer reasonably believes it is in the child's best interests to comply with the request.

38 Access to information

(1) For an investigation about a child under section 35 or 36, the officer conducting the investigation may request a child-related authority to allow the officer:

(a) to have access to specified information about the child; and

(b) to do so without informing the parents of the child.

(2) The officer may do so only if the officer reasonably believes:

(a) not to inform the parents is in the best interests of the child; or

(b) to inform the parents might compromise the investigation.

(3) The person must comply with the request.

Maximum penalty: 200 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

39 Protection of persons providing access or information

A person acting in good faith in complying with a request under section 34(2), 37(1) or 38(1) is not civilly or criminally liable, or in breach of any professional code of conduct, for complying with the request.

40 CEO may take action during inquiries or investigation

This Division does not prevent the CEO from taking another action for a child under this Part, Part 2.2 or Part 2.3 while an action is being taken for the child under this Division.

Division 5 General powers of CEO

41 Object of Division

The object of this Division is to ensure the CEO has sufficient power:

(a) to perform the CEO's functions under this Act; and

(b) to take actions for the wellbeing of children generally (including actions with the voluntary participation of parents and for children who are not necessarily in need of protection).

42 What CEO may do generally

(1) The CEO may take any action that is consistent with this Act:

(a) to promote the wellbeing of children generally; or

(b) to promote the wellbeing of young persons who have left the CEO's care; or

(c) to provide proper facilities for this Act (including the acquisition and management of land and other property for this Act); or

(d) to undertake research, publication and collection of information for the objects of this Act; or

(e) to cooperate with other Agencies, non-government organisations or other persons or bodies for an action mentioned in paragraph (a), (b), (c) or (d); or

(f) to facilitate that cooperation (including the creation of procedures for that cooperation and the review of those procedures).

(2) The CEO must have regard to the objects and underlying principles of this Act when acting under subsection (1).

43 CEO may request assistance

(1) The CEO may request a public authority to provide the CEO with specified assistance for the exercise of a power or the performance of a function under this Act.

(2) The public authority must comply with the request if doing so:

(a) is consistent with its functions; and

(b) does not unduly prejudice the performance of its functions.

(3) In this section:

public authority, see section 6 of the *Children's Commissioner Act*.

44 Child-related services

(1) The CEO may enter into an arrangement for:

(a) the provision of child-related services; and

(b) research and development to be carried out for child-related services; and

(c) the funding (in whole or part) of the services or the research and development.

(2) However, the CEO must not do so unless the CEO is satisfied the arrangement:

(a) is consistent with the underlying principles of this Act; and

(b) furthers the objects of this Act.

(3) This section does not limit section 42.

45 Coordination assistance

(1) The CEO may provide assistance to persons or bodies in coordinating their effort to provide services (including child-related services) for a child or young person who has left the CEO's care, including assistance in:

(a) convening a meeting of the persons or bodies; and

(b) drawing up a plan for the provision of the services.

(2) This section does not limit section 42.

46 Temporary placement arrangement

(1) The CEO may arrange for the temporary placement of a child who is residing with the parents of the child.

(2) The arrangement is for the child:

(a) to be taken into the CEO's care for a period not exceeding 2 months specified by the CEO; and

(b) to be placed under a placement arrangement subject to the conditions specified by the CEO.

(3) The CEO may enter into the arrangement only if:

(a) having regard to the wishes of the child, the CEO reasonably believes the arrangement will safeguard the wellbeing of the child; and

(b) the parents agree to enter into the arrangement; and

(c) if the child is at least 15 years of age – the child has consented to the arrangement.

(4) The CEO has daily care and control of the child while the arrangement is in force.

(5) The arrangement may be extended for further periods.

(6) However:

(a) each extended period must not exceed 2 months; and

(b) in any case – the arrangement must cease to be in force 6 months after it was made.

(7) The CEO may require the parents to make contributions towards the maintenance of the child while the arrangement is in force.

(8) One or both of the parents may, at any time:

(a) terminate the arrangement; and

(b) request the CEO to return the child to them.

(9) Subject to the operation of any other provisions in this Act and any other law of the Territory, the CEO must comply with the request within 48 hours after receiving the request.

(10) This section does not limit section 42.

Note

Unlike a placement arrangement resulting from other circumstances, the arrangement under this section is basically voluntary in nature.

47 Multiple arrangements

This Division does not prevent the CEO from:

(a) applying any provisions in this Division more than once for a person; or

(b) applying more than one provision in this Division for a person (whether at the same time or at different times).

Division 6 Mediation conference

48 Object of Division

The object of this Division is to ensure that, as far as possible, the wellbeing of a child is safeguarded through agreements between the parents of the child and other interested parties.

49 Mediation conference

(1) The CEO may arrange for a mediation conference to be convened for a child if:

(a) concerns have been raised about the wellbeing of the child; and

(b) the CEO reasonably believes the conference may address those concerns; and

(c) the parents of the child are willing to participate in the conference.

(2) The CEO may do so whether or not the CEO has already taken any other action for the child under this Part, Part 2.2 or Part 2.3.

(3) The conference may be convened for any purposes relating to those concerns as specified by the CEO.

(4) Without limiting subsection (3), the conference may be convened for one or more of the following purposes:

(a) establishing the circumstances giving rise to those concerns;

(b) reviewing an arrangement that has been made for the care of the child;

(c) making recommendations about the care of the child;

(d) arriving at an agreement on the best means of safeguarding the wellbeing of the child.

(5) The CEO must appoint a person (the ***convenor***) who is approved by the parents of the child and has the qualifications or experience prescribed by regulation to convene the conference.

(6) The convenor may invite the parents and other persons to attend the conference as the convenor considers appropriate.

(7) The regulations may make any provision for the conference, including the following:

(a) any procedural and reporting requirements for the conference;

(b) the appointment of a person to represent the interests of the child in the conference;

(c) the making of any agreement arising from the conference;

(d) the powers and functions of the convenor.

Division 7 Provisional protection of child

50 Object of Division

The object of this Division is to ensure the CEO has the power to take urgent action for children who might be in need of protection.

51 When CEO may take child into provisional protection

(1) The CEO may take a child into provisional protection if:

(a) the CEO reasonably believes:

(i) the child is in need of protection; and

(ii) the provisional protection is urgently needed to safeguard the wellbeing of the child; and

(b) no protection order or temporary protection order is in force for the child.

Examples of urgency for subsection (1)(a)(ii)

1 The child is likely to suffer from harm or exploitation if the child is left at the place where the child is found.

2 A parent of the child is likely to remove the child from the child's usual place of residence to prevent access to the child by authorised officers after becoming aware of a proposed application for a protection order for the child.

(2) As soon as practicable after taking a child into provisional protection, the CEO must inform the following persons that the CEO has done so:

(a) if a permanent care order for the child is in force – the person to whom parental responsibility for the child has been given;

(b) otherwise – each parent of the child.

52 Effect of provisional protection

(1) For the purposes of taking the child into provisional protection, an authorised officer may do one or more of the following:

(a) if the officer reasonably believes the child may be found at a place, do one or more of the following:

(i) enter the place;

(ii) search the place in order to find the child;

(iii) stay at the place for as long as the officer considers reasonably necessary to find and apprehend the child;

(d) remove the child from the place where the child is found;

(e) arrange for a medical examination of the child;

(f) arrange for the provision of other medical services for the child;

(g) make other arrangements for the care and protection of the child;

(h) if the officer is a staff member of a hospital in which the child is found – keep the child in the hospital for any of the purposes mentioned in paragraphs (e) to (g).

(2) However, the child may refuse to submit to any of the examination mentioned in subsection (1)(e) if the child is of sufficient maturity and understanding to make the decision.

(3) The officer may use any reasonable force or assistance in acting under subsection (1).

(4) The officer must give a report to the CEO about any action taken by the officer under subsection (1) as soon as practicable after taking the action.

(5) The CEO has daily care and control of the child while the child is in provisional protection.

53 Duration of protection

(1) The child must be in the CEO's care for a period determined by the CEO that does not exceed 72 hours from the time the CEO takes the child into provisional protection.

(2) Subject to any other provision of this Act and any other law of the Territory, the CEO must return the child by the end of the period to:

(a) if a permanent care order for the child is in force – the person to whom parental responsibility for the child has been given; or

(b) otherwise – a parent of the child.

54 CEO may take other action

This Division does not prevent the CEO from taking any other action under this Part or Part 2.3 for the child while the child is in provisional protection.

Note

Part 2.2 applies to the child while the child is in provisional protection, see section 67.

Division 8 Powers of authorised officers

Subdivision 1 Moving child to safe place

55 Object of Subdivision

The object of this Subdivision is to empower an authorised officer to take action, on a temporary basis and only in limited circumstances, to remove a child from a place where the wellbeing of the child is at risk.

56 Application

This Subdivision applies to a child if:

(a) the child is found at a place other than the child's usual place of residence; and

(b) the child is not under the direct supervision of:

(i) a parent of the child; or

(ii) a family member of the child; or

(iii) an adult capable of adequately supervising the child; and

(c) an authorised officer:

(i) does not believe the child is in need of protection; but

(ii) having regard to the circumstances in which the child is found – reasonably believes there is a risk to the wellbeing of the child if the child is not removed from the place.

57 Authorised officer may move child

(1) The officer may apprehend the child.

(1A) For the purpose of doing so, the officer may enter the place where the child is found.

(1B) If the officer apprehends the child, the officer must:

(a) return the child to the child's usual place of residence; or

(b) if it is not practicable or appropriate to do so:

(i) move the child to a safe place; and

(ii) keep the child at the safe place; and

(iii) make any arrangement for the care and protection of the child at the safe place.

(2) The officer may use any reasonable force or assistance in acting under subsections (1) to (1B).

(3) The child may be cared for at the safe place until the resumption of the care of the child by a person (a ***responsible person***) who has daily care and control of the child.

(4) The officer must, as soon as practicable after moving the child:

(a) take all necessary steps to inform a responsible person about moving the child; and

(b) if the officer is a police officer – inform the CEO about moving the child.

(5) The exercise of the officer's powers under subsections (1) to (1B) does not:

(a) affect any power, right or responsibility of a responsible person in relation to the child; or

(b) prevent the officer or any other person from holding, at a later time, the belief that the child is in need of protection.

(6) In this section:

safe place:

(a) includes:

(i) a place where the child may be temporarily kept for the child's safety (including a Part of a police station not normally used to detain a person); and

(ii) a place specified by regulation; but

(b) does not include a custodial correctional facility (as defined in section 11(1)(a) of the *Correctional Services Act*), lockup or any other place that a person may be remanded in custody.

Subdivision 2 Powers of restraint, search and seizure

58 Application

This Subdivision applies to a child if:

(a) an authorised officer or police officer is exercising the officer's powers under section 35, 36 or 57 in relation to the child; or

(b) the child is in the CEO's care.

59 Restraint

(1) An authorised officer may restrain the child if the officer reasonably believes it is necessary to do so to prevent the child from:

(a) being harmed; or

(b) harming others.

(2) The officer may do so by using any reasonable force or assistance.

60 Search

(1) An authorised officer may search the child (including anything found on or with the child) if the officer reasonably believes it is necessary to do so to prevent the child from:

(a) being harmed; or

(b) harming others.

(2) Without limiting subsection (1), the officer may search for any of the following:

(a) a firearm as defined in section 3(1) of the *Firearms Act*;

(b) a controlled weapon, offensive weapon or prohibited weapon as defined in section 3 of the *Weapons Control Act*;

(c) a dangerous drug as defined in section 3(1) of the *Misuse of Drugs Act*;

(d) alcohol;

(e) any other drug or substance capable of intoxicating a person.

(3) If the officer reasonably believes it is necessary to do so in the circumstances, the officer may designate another person:

(a) to conduct the search; or

(b) to assist the officer in conducting the search.

(4) The designated person must conduct the search or provide the assistance in accordance with any reasonable directions of the officer.

(5) The officer or designated person conducting the search must be someone who is of the same gender as the child.

(7) The officer or designated person may use any reasonable force or assistance in acting under this section.

(8) However, this section does not authorise a search that involves the removal of the child's clothing or an examination of the child's body cavities.

61 Seizure

(1) An authorised officer may seize anything found on or with the child if the officer reasonably believes it is necessary to do so to prevent the child from:

(a) being harmed; or

(b) harming others.

(2) The officer may do so by using any reasonable force or assistance.

(3) An authorised officer (other than a police officer) who seizes a thing mentioned in section 60(2)(a), (b) or (c) must, as soon as practicable after seizing the thing, deliver it to a police officer.

(4) An authorised officer may, in accordance with the regulations, destroy or otherwise dispose of anything seized under this section to prevent the child from:

(a) being harmed; or

(b) harming others.

62 Recording and reporting

An authorised officer must, as soon as practicable after exercising a power under this Subdivision :

(a) record the exercise of the power; and

(b) if the officer is a police officer – give the CEO a report about the exercise of the power.

Subdivision 3 Warrants

63 Warrant for access to child

(1) A Local Court Judge may, on the application of an authorised officer, grant a warrant under this section if the Local Court Judge is satisfied it is reasonably necessary:

(a) for exercising a power under section 35 or 36 in relation to a child; or

(b) for monitoring the wellbeing of a child for whom a placement arrangement is in force.

(2) The warrant authorises an authorised officer to do either or both of the following:

(a) if the officer reasonably believes the child may be found at a place, do one or more of the following:

(i) enter the place;

(ii) search the place in order to find the child;

(iii) stay at the place for as long as the officer considers reasonably necessary to find the child;

(b) if the child is found at a place – stay at the place and have contact with the child for as long as the officer considers reasonably necessary for specified purposes (whether or not in the presence of someone else).

64 Execution of warrant

(1) In executing the warrant, an authorised officer:

(a) may use any reasonable force or assistance; and

(b) must produce the warrant (or a copy of it) if asked to do so by a person at the place where the warrant is executed.

(2) Without limiting subsection (1)(a), the officer may be assisted by another authorised officer in executing the warrant.

(3) The other authorised officer may use any reasonable force in providing the assistance.

65 Failure to comply with warrant

(1) A person having the control of the place must comply with the warrant.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

Part 2.2 Children in CEO's care

Division 1 Preliminary matters

66 Object of Part

The object of this Part is to safeguard the wellbeing of:

(a) each child who is in the CEO's care; and

(b) each young person who has left the CEO's care.

67 When child is in CEO's care

(1) A child is in the CEO's care if:

(a) the child is under a temporary placement arrangement or in provisional protection; or

(b) the CEO otherwise has daily care and control of the child under an order of the Court (for example, a protection order) or a law of the Territory.

(2) The child leaves the CEO's care when the child ceases to be in the CEO's care.

68 Young person who has left CEO's care

A young person who has left the CEO's care is someone who:

(a) has left the CEO's care; and

(b) is between 15 and 25 years of age; and

(c) was last in the CEO's care for a continuous period of at least 6 months; and

(d) in the CEO's opinion, is unlikely to be in the CEO's care again in the future.

Division 1A Charter of Rights for Children in CEO's care

68A Charter of Rights

(1) The CEO must prepare a Charter of Rights for children who are in the CEO’s care.

(2) The CEO must promote compliance with the Charter of Rights.

(3) The CEO must review the Charter of Rights from time to time and may amend it as the CEO considers appropriate.

(4) The CEO must ensure that the Charter of Rights, as amended from time to time, is made available to the public in the manner the CEO considers appropriate.

(5) The CEO must ensure that the Charter of Rights includes:

(a) an explanation of the Charter of Rights and its effect; and

(b) information about the Commissioner and other entities known to the CEO that may be able to help children who consider the Charter of Rights is not being complied with.

(6) The CEO must give a copy of the Charter of Rights to each child who is in the CEO's care:

(a) as soon as practicable after the child comes into the CEO's care; and

(b) as soon as practicable after any amendment is made to the Charter of Rights.

(7) However, the CEO need not give a copy of the Charter of Rights and explanatory statement to a child under subsection (6) if the CEO considers that it is not appropriate to do so having regard to the child's maturity and understanding.

Division 2 Care plans

69 Application

This Division applies to a child who is in the CEO's care if:

(a) a protection order for the child is in force; or

(b) the CEO has daily care and control of the child under a court order prescribed by regulation.

70 CEO must prepare care plan

(1) As soon as practicable after the child is taken into the CEO's care, the CEO must prepare and implement a care plan for the child.

(2) The care plan is a written plan that:

(a) identifies the needs of the child; and

(b) outlines measures that must be taken to address those needs; and

(c) sets out decisions about daily care and control of the child, including, for example:

(i) decisions about the placement arrangement for the child; and

(ii) decisions about contact between the child and other persons.

71 Modification of care plan

(1) The CEO may modify the care plan at any time if the CEO considers it appropriate to do so.

(2) Without limiting subsection (1), the CEO must modify the plan if the child is about to leave the CEO's care.

(3) The modified plan must:

(a) identify the needs of the child in:

(i) preparing to leave the CEO's care; and

(ii) the child's transition to other living arrangements after leaving the CEO's care; and

(b) outline measures that must be taken to assist the child in meeting those needs.

72 Child's wishes to be taken into account

In preparing or modifying the plan, the CEO must have regard to the wishes of the child as the CEO considers reasonable and appropriate in the circumstances.

73 Provision of care plan to interested parties

(1) As soon as practicable after the CEO has prepared or modified the plan, the CEO must ensure a copy of it is given to the following persons:

(a) the child;

(b) each parent of the child;

(c) the carer of the child;

(d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

(2) However, the CEO is not required to do so for a person if the CEO considers it inappropriate or impracticable in the circumstances, having regard to:

(a) the wishes of the child; and

(b) any risk of harm to the child; and

(c) any other matters the CEO considers relevant.

74 Review of care plan

(1) The CEO must conduct regular reviews of the plan as follows:

(a) the first review must be conducted within 2 months after the child is first taken into the CEO's care;

(b) a review must be conducted again every 6 months afterwards.

(2) In addition, the CEO must conduct a review of the plan immediately after any of the following:

(a) the death of a parent of the child;

(b) the death of the carer of the child;

(c) a change of the placement arrangement for the child;

(d) an extension or variation of a court order mentioned in section 69(b) that relates to the child.

(3) This section does not prevent a review of the plan at other times.

(4) In conducting a review, the CEO must have regard to the views expressed by any of the following persons:

(a) the child;

(b) a parent of the child;

(c) the carer of the child;

(d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

(5) The CEO must:

(a) prepare a report of the review, and if the CEO considers it appropriate to do so – give a copy of the report to any of those persons; and

(b) keep a record of the review and a copy of the report.

(6) For this section, a review of a care plan includes a review of the operation and effectiveness of the plan.

Division 3 Interim care plans

75 Application

This Division applies to a child if:

(a) the child is in the CEO's care; but

(b) Division 2 does not apply to the child.

76 CEO must prepare interim care plan

(1) As soon as practicable after the child is taken into the CEO's care, the CEO must prepare and implement an interim care plan for the child.

(2) The interim care plan is a written plan that:

(a) identifies the immediate needs of the child; and

(b) outlines measures that must be taken to address those needs; and

(c) sets out decisions about daily care and control of the child, including, for example:

(i) decisions about the placement arrangement for the child; and

(ii) decisions about contact between the child and other persons.

Division 4 Placement arrangement

77 CEO must enter into placement arrangement

(1) The CEO must enter into a placement arrangement with other persons or bodies for a child who is in the CEO's care.

Note

Section 12 sets out the principles that should be upheld in the placement of Aboriginal children.

(2) The CEO may cancel the arrangement and replace it by another placement arrangement at any time.

78 Placement arrangement

(1) A placement arrangement is:

(a) an arrangement for placing a child who is in the CEO's care with any of the following persons (the ***carer***):

(i) a parent of the child;

(ii) a family member of the child;

(iii) an individual approved by the CEO; or

(b) any other arrangement for placing the child that the CEO considers appropriate in the circumstances.

(2) Without limiting subsection (1)(b), the arrangement can be one under which the child is not directly supervised by an adult.

(3) The regulations may:

(a) provide for the nomination and approval of an individual as a carer; and

(b) provide for the responsibilities of a carer; and

(c) specify the conditions for a placement arrangement, including, for example, the standards required of a facility for the arrangement.

79 Child to be informed

Before placing a child under a placement arrangement, the CEO must give the child any information and explanation about the arrangement as the CEO considers appropriate in the circumstances.

80 Carer to be informed

(1) The CEO must give the carer of the child any information about the child as the CEO considers appropriate for:

(a) the care of the child; and

(b) the safety of the child and other persons.

(2) However, the CEO must have regard to the child's wishes before giving the information.

(3) The carer must not disclose the information otherwise than:

(a) to a health practitioner for the care of the child; or

(b) in other circumstances approved by the CEO.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

81 Parents to be informed

(1) The CEO must give the parents of the child any information about the arrangement as the CEO considers appropriate in the circumstances.

(2) The CEO must have regard to the following in giving the information:

(a) the wishes of the child;

(b) the safety of the child and other persons.

(3) This section has effect subject to section 135 (which is about the CEO's obligation to give information to the parents under a protection order).

82 Payment to carer

The CEO may make payments to the carer in accordance with the arrangement.

83 Property of child

(1) The Court may, on the CEO's application:

(a) order the Public Trustee to take control of the property of the child; and

(b) make any other orders to give effect to the order.

(2) The CEO must:

(a) give the child, the parents of the child and other persons specified by the Court:

(i) a copy of each of the orders; and

(ii) a written notice explaining the terms and effect of the orders; and

(b) give the child any additional explanation of the effect of the orders if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

Division 4A Monitoring wellbeing of children in CEO's care

83A Power of authorised officers to monitor child in CEO's care

(1) An authorised officer may monitor the wellbeing of a child who is in the CEO's care.

(2) For the purpose of doing so, the authorised officer may do either or both of the following:

(a) make inquires about the child under section 83B;

(b) carry out an inspection under section 84.

(3) The authorised officer may do so whether or not the officer has received information that raises concerns about the child's wellbeing.

83B Inquiries

(1) For the purpose of monitoring the wellbeing of the child, the authorised officer may request any of the following persons to give the officer specified information about the child or another person (for example, a family member of the child) that directly or indirectly relates to the wellbeing of the child:

(a) a person whom the officer reasonably believes has the specified information;

(b) the carer of the child;

(c) a parent or another family member of the child;

(d) a police officer;

(e) a person employed or engaged by an Agency;

(f) an operator of child-related services;

(g) an approved provider of an education and care service operated under the *Education and Care Services National Law (NT)*;

(h) a health practitioner;

(i) the person in charge of a hospital or any other facility for health services;

(j) the person in charge of a school or any other educational institution;

(k) a service provider for a vulnerable child;

(l) any other person prescribed by regulation.

(2) The person must comply with the request.

Maximum penalty: 200 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (2) if:

(a) the defendant has a reasonable excuse; or

(b) the Commissioner of Police certifies in writing that compliance with the request would:

(i) prejudice the investigation of any unlawful conduct; or

(ii) disclose a confidential source of information in relation to the administration of law; or

(iii) prejudice the effectiveness of a method or procedure in relation to the administration of law; or

(iv) facilitate a person's escape from lawful custody; or

(v) endanger the safety of a person.

84 Inspection of place where child resides

(1) An authorised officer may, at any reasonable time, enter the place where the child ordinarily resides in order to monitor the wellbeing of the child.

(2) The authorised officer may make any reasonable request to a person having the control of the place for the purposes of:

(a) inspecting the place; or

(b) having contact with the child.

(3) The person must comply with the request.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

Note

A warrant may be granted for monitoring the wellbeing of the child, see section 63.

84A Power to investigate

(1) This section applies if the CEO believes on reasonable grounds that a child who is in the CEO's care:

(a) has suffered harm or exploitation while in the CEO's care; or

(b) is suffering harm or exploitation; or

(c) is likely to suffer harm or exploitation while in the CEO's care.

(2) The CEO may initiate an investigation into the suspected or potential harm or exploitation.

84B Investigation – access to information

(1) For an investigation about a child under section 84A, the CEO may request a person mentioned in section 83B(1)(d) to (l) to give the CEO access to specified information about the child.

(2) The CEO need not inform the child's carer of the request.

(3) The person must comply with the request.

Maximum penalty: 200 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

84C Report of investigation

On completing an investigation, the CEO must:

(a) consider whether any changes need to be made in relation to the care of the child; and

(b) if the investigation disclosed that the child has suffered harm or exploitation while in the CEO's care – report that matter to the Commissioner as soon as practicable.

84D Protection of persons providing access or information

A person acting in good faith in complying with a request under the Division is not civilly or criminally liable, or in breach of any professional code of conduct, for complying with the request.

85 Authorised officer's power to apprehend child

(1) If a child who is in the CEO's care is absent from the place where the child ordinarily resides, an authorised officer may apprehend the child in order to return the child to the place.

(2) If the officer reasonably believes the child may be found at a place, the officer may do one or more of the following:

(a) at any time, enter the place;

(b) search the place in order to find the child;

(c) stay at the place for as long as the officer considers reasonably necessary to find and apprehend the child.

(3) If the officer apprehends the child, the officer must:

(a) return the child to the place where the child ordinarily resides; or

(b) if it is not practicable or appropriate to do so:

(i) move the child to a safe place (as defined in section 57(6)); and

(ii) keep the child at the safe place; and

(iii) make any arrangement for the care and protection of the child at the safe place.

(4) The officer may use any reasonable force or assistance in acting under this section.

Division 5 Young persons who have left CEO's care

86 Assistance for young person who has left CEO's care

(1) A young person who has left the CEO's care is entitled, free of any charges, to the possession of any of the person's personal items held by:

(a) the Department; or

(b) anyone who was a carer of the person; or

(c) a party to a placement arrangement for the person.

(2) The CEO must ensure the person is provided with child-related services and other services the CEO considers appropriate.

(3) Without limiting subsection (2), the CEO may assist the person in obtaining any of the following:

(a) accommodation;

(b) education or training;

(c) employment;

(d) legal services;

(e) health services;

(f) counselling services.

(4) In addition, the CEO may give financial assistance to the person for any of the following purposes:

(a) the person's education or training;

(b) obtaining and furnishing the person's accommodation;

(c) living in close proximity to the place where the person is or will be:

(i) undertaking education or training; or

(ii) employed or seeking employment.

(5) The financial assistance must be given on terms and conditions the CEO considers appropriate in the circumstances.

(6) In this section:

personal items, of a person, includes the following:

(a) the person's birth certificate;

(b) school reports or other reports relating to the person's education or training;

(c) photographs belonging to the person;

(d) anything else prescribed by regulation.

Part 2.3 Court's powers for children

Division 1 Preliminary matters

87 Object of Part

(1) The object of this Part is to create an appropriate judicial process for safeguarding the wellbeing of children, particularly children who are or might be in need of protection.

(2) The object is to be achieved by:

(a) providing for a family matters division within the Court to hear and determine matters under this Act (see Division 2); and

(b) providing for:

(i) the Court's power to make various orders for children (see Division 4); and

(ii) procedural matters (see Divisions 3 and 5 to 7).

88 Definitions

In this Part:

Court order means an order made by the Court under this Act.

Court proceedings means proceedings in the Court under this Act.

Division 2 Family matters division of Court

89 Family matters division of Court

(1) There is to be a division of the Court to deal with proceedings under this Act.

(2) For dealing with proceedings under this Act, the Court must be constituted by a Local Court Judge.

90 Paramount consideration

(1) In Court proceedings, the Court must regard the best interests of the child to whom the proceedings relate as paramount.

(2) Without limiting subsection (1), the Court must give priority to the child if the rights of the child conflict with the rights of an adult.

91 Jurisdiction not affected by other proceedings

(1) Court proceedings are not affected by any criminal proceedings against:

(a) the child to whom the Court proceedings relate; or

(b) any other party to the Court proceedings.

(2) Subsection (1) has effect whether or not the criminal proceedings arose out of the same facts as the Court proceedings.

92 Sittings of Court

(1) The Court may hold several sittings at the same time.

(2) The Court must:

(a) ensure Court proceedings are separate from other proceedings of the Local Court or proceedings of another court; and

(b) conduct Court proceedings at a place approved by the Minister administering the *Local Court Act* (the ***relevant Minister***).

(3) The relevant Minister must ensure the approved place:

(a) provides adequate and appropriate facilities for Court proceedings; and

(b) is separated from places in which other proceedings of the Local Court or proceedings of another court are being conducted.

Division 3 Court proceedings

93 Nature of proceedings

(1) Court proceedings must be conducted with as little formality and legal technicality as the circumstances permit.

(2) Subject to any directions of the Court, the Court is not bound by the rules of evidence.

94 Parties to proceedings

(1) The following are parties to the proceedings:

(a) the child to whom the proceedings relate;

(b) each parent of the child;

(c) the CEO;

(d) each person proposed to be given daily care and control of, or parental responsibility for, the child under a Court order;

(e) any other person considered by the Court to have a direct and significant interest in the wellbeing of the child.

(2) This section has effect subject to section 125 (which is about the parties to proceedings for a protection order).

95 Standard of proof

If the Court is required to be satisfied of a matter in the proceedings, the matter must be established on the balance of probabilities.

96 Expedition

(1) The proceedings must be conducted as expeditiously as possible to minimise their effect on the child.

(2) For subsection (1), the Court:

(a) may set a timetable for each matter to which the proceedings relate, having regard to the age and developmental needs of the child; and

(b) may give such directions the Court considers appropriate to ensure the timetable is kept.

97 Restrictions on publication

A person is guilty of an offence if the person:

(a) publishes a report of:

(i) any of the proceedings; or

(ii) the results of any of the proceedings; and

(b) is not authorised to do so by the Court or a law in force in the Territory.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

98 Understanding proceedings

(1) The Court must, as far as practicable, ensure each party to the proceedings understands the nature and purposes of the proceedings.

(2) For subsection (1), the Court may direct that the services of a person (such as an interpreter) be provided to a party to the proceedings.

99 Restrictions on attendance

Except as otherwise directed by the Court, a person must not attend any of the proceedings if:

(a) the person is not a party to the proceedings; or

(b) the Court has ordered the person not to attend the proceedings.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

100 Appearance of parents

(1) Except as otherwise directed by the Court, the parents of the child must attend the proceedings.

(2) The Court may order the parents to attend the proceedings.

(3) This section has effect subject to sections 105 and 126 (which relate to the making of a temporary protection order or protection order in the absence of the parents).

101 Right of representation

(1) A party to the proceedings may be represented by a legal practitioner or any other person.

(2) The Court may adjourn the proceedings until a party has a reasonable opportunity to obtain the representation.

102 Hearing of applications together

(1) The Court may hear 2 or more applications together if:

(a) a party to any of the applications asks the Court to do so; and

(b) the Court considers it in the interests of justice to do so.

(2) The Court may do so even if the applications have different parties.

Division 4 Orders for children

Subdivision 1 Temporary protection order

103 Applying for temporary protection order

(1) The CEO may apply to the Court for a temporary protection order for a child if:

(a) the CEO reasonably believes:

(i) the child is in need of protection; and

(ii) the proposed order is urgently needed to safeguard the wellbeing of the child; and

(b) no protection order is in force for the child.

(2) The CEO may make the application:

(a) whether or not an assessment order is in force for the child; and

(aa) whether or not a permanent care order is in force for the child; and

(b) whether or not the child is in provisional protection.

104 How application is made

(1) The application may be made to the Court in any way the Court considers reasonable in the circumstances (including, for example, telephone, fax or other electronic means).

(2) The CEO must specify in the application:

(a) why the CEO considers the proposed order is necessary; and

(b) the proposed arrangement for the care and protection of the child under the order.

(3) Any information in support of the application must be in the form of a statement made on oath.

(4) However, if the application is made by telephone, fax or other electronic means:

(a) the Court may allow the application to be made before the statement is made on oath; but

(b) the CEO must send the duly made statement to the Court not later than the day after the day of the application.

(5) For subsection (4), the Court may give any directions about the application as the Court considers appropriate in the circumstances.

105 Making of order

(1) The Court must, immediately after the application is made:

(a) make the temporary protection order if the Court is satisfied there are reasonable grounds for believing:

(i) the child is in need of protection; and

(ii) the proposed order is urgently needed to safeguard the wellbeing of the child; or

(b) dismiss the application if the Court is not so satisfied.

(2) As soon as practicable after making the decision, the Court must give the CEO a copy of:

(a) the order if the Court decides to make the order; or

(b) otherwise – a statement of the reasons for not making the order.

(3) Without limiting subsection (2), the Court may give the copy by sending it to the CEO by fax or other electronic means.

(4) The Court must keep a record of:

(a) the application (whether or not a written application is given to the Court); and

(b) any information given to the Court for the application; and

(c) the decision on the application; and

(d) the reasons for the decision.

(5) To avoid doubt, the Court may decide the application in the absence of the parents of the child.

106 Notice of order

(1) As soon as practicable after the order is made, the CEO must:

(a) give a copy of the order to:

(i) if a permanent care order for the child is in force – the person to whom parental responsibility for the child has been given; or

(ii) otherwise – each parent of the child; and

(b) inform the child about the order; and

(c) explain the effect of the order to the child.

(2) The CEO may give the copy to a parent of the child or the person to whom parental responsibility for the child has been given:

(a) by personally serving the copy on the parent or other person; or

(b) if the CEO considers it impracticable to do so – by:

(i) leaving it at the last known address of the parent or other person; or

(ii) sending it by post to that address.

(3) In addition, the CEO may give a copy of the order to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

107 Effect of order

The order:

(a) gives daily care and control of the child to the CEO while the order is in force; and

(b) except as provided by section 109(2) and (3) – is in force for 14 days from the time it is made.

108 Authorised officer's powers

(1) To give effect to the order, an authorised officer may do one or more of the following:

(a) if the officer reasonably believes the child may be found at a place, do one or more of the following:

(i) enter the place;

(ii) search the place in order to find the child;

(iii) stay at the place for as long as the officer considers reasonably necessary to find and apprehend the child;

(d) apprehend the child;

(e) remove the child from the place where the child is found;

(f) arrange for a medical examination of the child;

(g) arrange for the provision of other medical services for the child;

(h) make other arrangements for the care and protection of the child.

(2) However, the child may refuse to submit to any of the examination mentioned in subsection (1)(f) if the child is of sufficient maturity and understanding to make the decision.

(3) The officer may use any reasonable force or assistance in acting under subsection (1).

(4) The officer must give a report to the CEO about any action taken by the officer under subsection (1) as soon as practicable after taking the action.

109 What happens when order ceases to be in force

(1) Subject to any other provision of this Act, when the order ceases to be in force the CEO must return the child to:

(a) if a permanent care order for the child is in force – the person to whom parental responsibility for the child has been given; or

(b) otherwise – a parent of the child.

(2) The CEO may return the child to a parent of the child or the other person mentioned in subsection (1)(a) before the order ceases to be in force:

(a) under an agreement arising from a mediation conference under section 49; or

(b) if the CEO considers it appropriate to do so in the circumstances.

(3) If the CEO returns the child under subsection (2):

(a) the CEO must notify the Court about returning the child; and

(b) the order ceases to be in force when the Court is so notified.

110 Other action for child while order in force

(1) This Subdivision does not prevent any of the following from happening while the temporary protection order is in force:

(a) an inquiry or investigation under Part 2.1 in relation to the child;

(b) an application for an assessment order for the child;

(c) an assessment order being in force for the child;

(d) an application for another temporary protection order for the child;

(e) an application for a protection order for the child.

(2) However, the CEO must not apply for another temporary protection order for the child while an existing temporary protection order (the ***existing order***) for the child is in force if:

(a) the existing order was made when a previous temporary protection order (the ***previous order***) was in force; and

(b) the existing order took effect immediately after the previous order ceased to be in force; and

(c) the CEO did not return the child to a parent of the child or the other person mentioned in section 109(1)(a) before or when the existing order took effect.

(3) Subsection (2) does not prevent an application for a temporary protection order for the child after:

(a) a temporary protection order for the child has ceased to be in force; and

(b) the CEO has returned the child to a parent of the child or the other person mentioned in section 109(1)(a).

Subdivision 2 Assessment order

111 Applying for assessment order

(1) The CEO may apply to the Court for an assessment order for a child to authorise the carrying out of an assessment if:

(a) a protection order is not in force for the child; and

(b) the CEO reasonably believes the proposed assessment is necessary for determining whether the child is in need of protection; and

(c) the proposed assessment cannot be carried out without the order.

(2) For subsection (1), an assessment includes:

(a) any assessment of the child for determining whether the child is in need of protection; and

(b) any assessment of a parent of the child for determining whether the parent is capable of exercising parental responsibility for the child.

(3) Without limiting subsection (2), an assessment may involve:

(a) a medical or psychological examination of the child or a parent of the child; and

(b) the taking and examination of samples from the child or a parent of the child.

(4) The CEO may make the application:

(a) whether or not the child is in the CEO's care; and

(b) whether or not the CEO has applied for a temporary protection order or protection order for the child.

112 How application is made

The CEO must specify in the application:

(a) why the CEO considers the proposed assessment is necessary; and

(b) details of the proposed assessment; and

(c) any of the following directions that the CEO seeks from the Court:

(i) a direction restricting a specified person's contact with the child while the assessment order is in force;

(ii) a direction requiring a child-related authority to give the CEO specified information about the child.

113 When Court may hear application

The Court must not hear the application unless the Court is satisfied:

(a) the CEO is entitled to make the application under section 111; and

(b) either:

(i) the CEO has taken reasonable steps to obtain the consent of at least one of the parents of the child for the proposed assessment; or

(ii) it is not practicable for the CEO to do so.

114 Court to consider certain matters

In deciding the application, the Court must consider:

(a) whether the proposed assessment is necessary; and

(b) whether the assessment is likely to provide information needed to determine whether the child is in need of protection; and

(c) whether any distress caused by the assessment to the child will be outweighed by the value of the information to be obtained from the assessment; and

(d) any distress caused to the child by a previous assessment of the same or a similar nature; and

(e) any other matters the Court considers relevant.

115 Order of Court

The Court may:

(a) make an assessment order authorising the carrying out of the proposed assessment or any other specified assessment for determining whether the child is in need of protection; or

(b) make an assessment order covered by paragraph (a) that includes one or more of the following directions (whether or not they were sought by the CEO):

(i) a direction restricting a specified person's contact with the child while the order is in force;

(ii) a direction requiring a child-related authority to give the CEO specified information about the child; or

(c) dismiss the application.

116 Notice of order

(1) As soon as practicable after the order is made, the CEO must give each party to the proceedings (except the child):

(a) a copy of the order; and

(b) a written notice:

(i) explaining the effect of the order; and

(ii) stating the party may appeal against the order under Division 6 within 28 days after it is made; and

(iii) stating how the appeal may be instituted.

(2) The CEO may give the copy and notice:

(a) by personally serving them on the party; or

(b) if the CEO considers it impracticable to do so:

(i) by leaving them at the party's last known address; or

(ii) by sending them by post to that address.

(3) The CEO:

(a) must explain the effect of the order and notice to the child; and

(b) may give a copy of the order and notice to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

117 Effect of order

(1) The order has effect for 28 days.

(2) On the CEO's application, the Court may extend the order for a further period that does not exceed 28 days.

(3) However, the order cannot be extended again.

(4) The order authorises:

(a) the making of an assessment specified in the order; and

(b) if the order includes a direction mentioned in section 115(b) – the actions specified in the direction; and

(c) the giving of information obtained from the assessment to the CEO and other specified persons.

(5) Despite any law of the Territory, a person acting in good faith in giving information under the order is not civilly or criminally liable, or in breach of any professional code of conduct, for giving the information.

118 Refusal to submit to assessment

(1) The child may refuse to submit to any assessment that relates to the child if the child is of sufficient maturity and understanding to make the decision.

(2) A parent of the child may refuse to submit to any assessment that relates to the parent.

119 What happens after assessment

(1) The CEO must give the Court the result of the assessment in a report in the approved form.

(2) Without limiting subsection (1), the report must state whether or not the CEO believes the child is in need of protection on the basis of the result.

120 CEO may take other action

This Subdivision does not prevent the CEO from doing any of the following while the assessment order is in force:

(a) taking another action under this Part for the child;

(b) taking an action under Part 2.1 for the child.

Subdivision 3 Protection order

121 Applying for protection order

(1) The CEO may apply to the Court for a protection order for a child if the CEO reasonably believes:

(a) the child

(i) is in need of protection; or

(ii) would be in need of protection but for the fact that the child is currently in the CEO's care; and

(b) the proposed order is the best means to safeguard the wellbeing of the child.

(2) The CEO may make the application:

(a) whether or not the child is in the CEO's care; and

(b) whether or not an application for a temporary protection order or assessment order for the child has been made; and

(c) whether or not a temporary protection order or assessment order for the child is in force.

Note

The provisions about a protection order in this Part are Part of a system for the transfer of such orders and related proceedings between jurisdictions, see Part 2.4.

122 How application is made

The CEO must specify in the application:

(a) the proposed order; and

(b) when the order is proposed to have effect; and

(c) why the CEO considers the order is necessary; and

(d) the proposed arrangement for the care and protection of the child under the order.

123 Directions in protection order

(1) The proposed order must specify one or more of the following directions:

(a) a direction (a ***supervision direction***) requiring one or more of the following:

(i) that a person must do, or refrain from doing, a specified thing directly related to the protection of the child;

(ii) that the CEO must supervise the protection of the child in relation to specified matters;

(b) a direction (a ***daily care and control direction***) giving daily care and control of the child to a specified person;

(c) a direction (a ***short-term parental responsibility direction***) giving parental responsibility for the child to a specified person for a specified period not exceeding 2 years;

(d) a direction (a ***long-term parental responsibility direction***) giving parental responsibility for the child to a specified person for a specified period that:

(i) exceeds 2 years; and

(ii) ends before the child turns 18 years of age.

(2) Without limiting subsection (1)(a)(i), a supervision direction may:

(a) require a person not to have any direct or indirect contact with the child; or

(b) require a person not to have any direct or indirect contact with the child except when a specified person or a person belonging to a specified group is present.

124 Notice of application

(1) As soon as practicable after applying for the order, the CEO must give to each parent of the child::

(a) a copy of the application; and

(b) a written notice stating:

(i) when and where the application is to be heard; and

(ii) that the application may be heard and decided in the absence of the parent.

(2) The CEO may give the copy and notice:

(a) by personally serving them on the parent; or

(b) if the CEO considers it impracticable to do so:

(i) by leaving them at the parent's last known address; or

(ii) by sending them by post to that address.

(3) The CEO:

(a) must explain the effect of the application and notice to the child; and

(b) may give a copy of the application and notice to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

125 Parties to proceedings

(1) The parents of the child are the respondents in the proceedings for the application.

(2) The other parties to the proceedings are:

(a) the child; and

(b) the CEO; and

(c) a person proposed to be given daily care and control of, or parental responsibility for, the child under the order; and

(d) any other person who:

(i) has applied to the Court to be a party to the proceedings; and

(ii) is considered by the Court to have a direct and significant interest in the wellbeing of the child.

126 Hearing in absence of parents

(1) The Court may hear the application in the absence of a parent of the child if:

(a) the Court is satisfied the CEO has given the parent a notice that complies with section 124(1); or

(b) the CEO has not given the parent a notice that complies with section 124(1) but the Court is satisfied the application should be heard in the absence of the parent despite the non-compliance.

(2) However, this section does not limit the Court's power to exclude the parent or anyone else from Court proceedings.

127 Court-ordered mediation conference

(1) Before deciding the application, the Court may order a mediation conference to be convened for the purposes specified by the Court.

(2) Without limiting subsection (1), the conference may be convened for one or more of the following purposes:

(a) establishing the circumstances giving rise to the application;

(b) reviewing an arrangement that has been made for the care of the child;

(c) making recommendations about the arrangement for the care of the child;

(d) arriving at an agreement on the best means of safeguarding the wellbeing of the child.

(3) The Court:

(a) must appoint someone (the ***convenor***) who has the qualifications or experience prescribed by regulation to convene the conference; and

(b) may direct that:

(i) the conference be convened at a specified time and place; and

(ii) specified persons (including parties to the proceedings and any other persons) are to attend the conference.

(4) A person required to attend the conference may be represented by someone appointed by the person.

(5) The regulations may make any provision for the conference, including the following:

(a) any procedural and reporting requirements for the conference;

(b) the appointment of a person to represent the interests of the child in the conference;

(c) the making of any agreement arising from the conference;

(d) the powers and functions of the convenor.

128 Order of Court

(1) The Court may:

(a) make a protection order for the child:

(i) as proposed by the CEO; or

(ii) specifying other directions mentioned in section 123 as the Court considers appropriate; or

(b) dismiss the application.

(2) The Court may make any order for an agreement arising from a mediation conference for the child.

129 When Court must make order

The Court must make the protection order if the Court is satisfied:

(a) the child:

(i) is in need of protection; or

(ii) would be in need of protection but for the fact that the child is currently in the CEO's care, and

(b) the order is the best means of safeguarding the wellbeing of the child.

130 Court to consider certain matters

(1) In making the decision, the Court must consider:

(a) any matters arising from a mediation conference for the child; and

(b) the wishes of the following:

(i) the child;

(ii) a parent of the child;

(iii) a person proposed to be given daily care and control of, or parental responsibility for, the child under the order;

(iv) any other person considered by the Court to have a direct and significant interest in the wellbeing of the child; and

(c) if the CEO proposes that daily care and control of, or parental responsibility for, the child be given to a person (including, for example, the CEO):

(i) any report or recommendation given to the Court by the CEO about the proposal; and

(ii) whether there is another person who is better suited to be given daily care and control of, or parental responsibility for, the child; and

(iii) the needs of the child for long-term stability and security; and

(d) any other matters the Court considers relevant.

(2) Without limiting subsection (1)(c), the Court must not give a person who is not a parent of the child parental responsibility for the child under a long-term parental responsibility direction unless the Court is satisfied:

(a) giving the responsibility to the person is the best means of safeguarding the child's wellbeing; and

(b) there is no one else who is better suited to be given the responsibility.

131 Extraterritoriality

To avoid doubt, the Court may make a protection order for the child even if the circumstances causing the child to be in need of protection occurred:

(a) outside the Territory or Australia; or

(b) partly in the Territory and partly outside the Territory or Australia.

132 Duration of order

(1) The order has effect as specified by the Court unless the Court extends, varies or revokes the order under section 136 or 137.

(2) In any case, the order must cease to have effect when the child turns 18 years of age.

133 Notice of order

(1) As soon as practicable after the order is made, the CEO must give each party to the proceedings (except the child):

(a) a copy of the order; and

(b) a written notice:

(i) explaining the effect of the order; and

(ii) stating the party may appeal against the order under Division 6 within 28 days after it is made; and

(iii) stating how the appeal may be instituted.

(2) The CEO may give the copy and notice:

(a) by personally serving them on the party; or

(b) if the CEO considers it impracticable to do so:

(i) by leaving them at the party's last known address; or

(ii) by sending them by post to that address.

(3) The CEO:

(a) must explain the effect of the order and notice to the child; and

(b) may give a copy of the order and notice to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

134 Obligations to supervise protection of child

(1) If the order includes a supervision direction requiring the CEO to supervise the protection of the child in relation to specified matters, the CEO must, while the order is in force, maintain reasonable contact with:

(a) the child; and

(b) the parents of the child; and

(c) any other person who is residing with the child.

(2) For subsection (1):

(a) the parents of the child or any other person who has daily care and control of the child must:

(i) keep the CEO informed about where the child is residing; and

(ii) allow an authorised officer to have reasonable contact with the child; and

(b) an authorised officer may, at any reasonable time, enter a place where the child is located to have contact with the child; and

(c) an authorised officer may, at any reasonable time, enter the place where the child ordinarily resides to inquire about the specified matters; and

(d) the CEO may, by written notice, require a parent of the child or a person residing with the child to do or refrain from doing a specified thing for the supervision direction.

(3) The notice must state the reasons for the requirement.

(4) An authorised officer may use any reasonable force or assistance in acting under this section.

135 Obligations of CEO for order

(1) If the protection order gives daily care and control of, or parental responsibility for, the child to the CEO, the CEO:

(a) must give the parents of the child information about:

(i) where the child is residing; and

(ii) any arrangement that has been made for the care of the child; and

(b) must provide opportunity for the child to have contact with the parents and other family members of the child as often as is reasonable and appropriate in the circumstances.

(2) Subsection (1) has effect subject to any contrary direction of the Court.

136 Extension of order

(1) The CEO may, before the order ceases to be in force, apply to the Court for the order to be extended for a further specified period.

(2) The order may be extended more than once.

(3) This Subdivision applies to an application for an extension of the order in the same way as it applies to the application for the order.

(4) However, in considering the application, the Court may take into account:

(a) any contravention of the order by a person; and

(b) any contravention of this Act in relation to the child by a person.

137 Variation and revocation of order

(1) Before the order ceases to be in force, a party to the proceedings for the making of the order may apply to the Court for the order to be:

(a) varied; or

(b) revoked; or

(c) revoked and replaced by a new protection order.

(2) However, a parent of the child must not:

(a) apply for the order to be replaced if the proposed new order will give parental responsibility for the child to a different person; or

(b) without the leave of the Court – apply for the order to be varied or revoked if a similar application has been decided by the Court.

(3) The Court may only grant the leave if the Court is satisfied the parent has new evidence to present to the Court.

(4) An application under subsection (1) must be made as if it were an application for a protection order.

(5) This Subdivision applies to the application with the following changes:

(a) as soon as practicable after making the application, the applicant must give a copy of the application to the CEO and each parent of the child (except a parent who is the applicant);

(b) section 124(1) and (2) do not apply to the CEO, but the CEO must comply with section 124(3) as soon as practicable after receiving the copy of the application;

(c) in considering the application, the Court may take into account:

(i) any contravention of the order by a person; or

(ii) any contravention of this Act in relation to the child by a person.

(6) The Court may revoke the order only if the Court is satisfied the order is no longer necessary.

Subdivision 4 Permanent care orders

137A Permanent care order

(1) A ***permanent care order*** is an order made by the Court in relation to a child, for the period that ends when the child turns 18 years of age, that orders that a person have the parental responsibility for the child.

(2) Only the CEO may apply for a permanent care order.

(3) The CEO may apply to the Court for a permanent care order for a child if the CEO reasonably believes:

(a) the child would be in need of protection but for the fact that, at the time the application is made, a protection order with a long-term parental responsibility direction giving parental responsibility for the child to the CEO or another specified person (or both) is in force for the child for a period that ends immediately before the child turns 18 years of age; and

(b) the proposed order is the best means to safeguard the wellbeing of the child; and

(c) the person proposed to be given the parental responsibility for the child has demonstrated the person's suitability to be given that responsibility.

137B How application is made

The application must include the following:

(a) the proposed order;

(b) when the order is proposed to have effect;

(c) why the CEO considers the order is necessary;

(d) a statement that the person proposed to be given the parental responsibility for the child consents to the making of the order;

(e) if the CEO considers it appropriate to do so – a request that the permanent care order include a direction authorising the child to travel outside Australia without the consent of the child's parent.

137C Notice of application

(1) As soon as practicable after applying for the order, the CEO must give to each parent of the child and the person proposed to be given the parental responsibility for the child under the order:

(a) a copy of the application; and

(b) a written notice stating:

(i) when and where the application is to be heard; and

(ii) that the application may be heard and decided in the absence of the parent or the person proposed to be given the parental responsibility for the child under the order.

(2) The CEO may give the copy and notice to a parent of the child or the person proposed to be given the parental responsibility for the child under the order:

(a) by personally serving them on the parent or other person; or

(b) if the CEO considers it impracticable to do so – by:

(i) leaving them at the last known address of the parent or other person; or

(ii) sending them by post to that address.

(3) The CEO:

(a) must explain the effect of the application and notice to the child; and

(b) may give a copy of the application and notice to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

137D Parties to proceedings

(1) The parents of the child are the respondents in the proceedings for the application.

(2) The other parties to the proceedings are:

(a) the child; and

(b) the CEO; and

(c) the person proposed to be given parental responsibility for the child under the order.

137E Hearing in absence of parents

(1) The Court may hear the application in the absence of a parent of the child if:

(a) the Court is satisfied that the CEO has given the parent a notice that complies with section 137C(1)(b); or

(b) the CEO has not given the parent a notice that complies with section 137C(1)(b) but the Court is satisfied the application should be heard in the absence of the parent despite the non-compliance.

(2) However, subsection (1) does not limit the Court's power to exclude the parent or anyone else from Court proceedings.

137F Order of Court

(1) The Court may:

(a) make a permanent care order for the child as proposed by the CEO; or

(b) dismiss the application.

(2) If the Court makes a permanent care order, any protection order in force for the child is revoked.

(3) When making a permanent care order for a child, the Court:

(a) may, if the application for the order requested a direction authorising the child to travel outside Australia without the consent of a parent of the child, make that direction; and

(b) must not make any other direction.

137G Making permanent care orders

The Court must make the permanent care order if the Court is satisfied:

(a) the child would be in need of protection but for the fact that the child is, at the time the order is made in the care of the CEO or another person; and

(b) the order is the best means to safeguard the wellbeing of the child; and

(c) the person proposed to be given the parental responsibility for the child under the order has demonstrated the person's suitability to have that responsibility.

137H Court to consider certain matters

In making the decision whether or not to make the permanent care order, the Court must consider:

(a) the wishes of the following:

(i) the child;

(ii) a parent of the child;

(iii) the person proposed to be given parental responsibility for the child under the order;

(iv) any other person considered by the Court to have a direct and significant interest in the wellbeing of the child; and

(b) any other matters the Court considers relevant.

137J Extraterritoriality

To avoid doubt, the Court may make a permanent care order for the child even if the circumstances causing the child to be in need of protection occurred:

(a) outside the Territory or Australia; or

(b) partly in the Territory or Australia and partly outside the Territory or Australia.

137K Duration of order

A permanent care order is in force from when it is made until the child turns 18 years of age unless the Court earlier revokes the order under section 137M.

137L Notice of order

(1) As soon as practicable after a permanent care order is made, the CEO must give each party to the proceedings (except the child):

(a) a copy of the order; and

(b) a written notice:

(i) explaining the effect of the order; and

(ii) stating that the party may appeal against the order under Division 6 within 28 days after it is made; and

(iii) stating how the appeal may be instituted.

(2) The CEO may give the copy and notice to a party:

(a) by personally serving them on the party; or

(b) if the CEO considers it impracticable to do so:

(i) by leaving them at the party's last known address; or

(ii) by sending them by post to that address.

(3) The CEO may give a copy of the order and notice to the child if the CEO considers it appropriate to do so having regard to the child's maturity and understanding.

137M Revocation of order

(1) Before the permanent care order expires, the CEO may apply to the Court for the order to be:

(a) revoked; or

(b) revoked and replaced by a protection order.

(2) This Subdivision applies to the application with the following changes:

(a) as soon as practicable after making the application, the CEO must give a copy of the application to each party to the proceedings for the making of the permanent care order;

(b) in considering the application, the Court may take into account:

(i) any contravention of the order by a person; or

(ii) any contravention of this Act in relation to the child by a person.

(3) The Court may revoke the order only if the Court is satisfied that to revoke the order is the best means to safeguard the wellbeing of the child.

(4) If the Court revokes the permanent care order, the Court may:

(a) simply revoke the order; or

(b) revoke the order and make a protection order, including any directions the Court considers appropriate.

Division 5 Adjournment

138 Court may adjourn proceeding

(1) The Court may adjourn proceedings for an application for an assessment order, a protection order or a permanent care order (including an application under section 136 or 137).

(2) The Court must:

(a) to the greatest extent possible, avoid granting adjournments; and

(b) may grant adjournments only if the Court considers:

(i) doing so is in the best interests of the child to whom the proceedings relate; or

(ii) there are other strong reasons for doing so.

(3) In deciding the period of adjournment, the Court must have regard to the principle that it is in the best interests of the child for the application to be decided as soon as possible.

(4) The Court:

(a) must state its reasons for the adjournment; and

(b) may give directions to the parties to the proceedings about what they must do or refrain from doing during the adjournment.

139 Order on adjournment

(1) On granting the adjournment, the Court may make one or more of the following orders:

(a) an order giving daily care and control of the child:

(i) to the CEO if the proceedings relate to an assessment order; or

(ii) to the CEO or a family member of the child if the proceedings relate to a protection order;

(b) an order that a report be prepared and filed in the Court about the following persons:

(i) the child;

(ii) the child's family;

(iii) if the proceedings relate to an application for a permanent care order – the person proposed to be given parental responsibility for the child under the order;

(c) an order authorising a medical examination of the child and the filing of a report of the examination in the Court;

(d) an order restricting the contact between the child and specified persons;

(e) an order that a mediation conference be convened for the child.

(2) Each of the orders has effect during the adjournment.

(3) The Court may, without limiting what may be addressed by a report prepared for subsection (1), specify matters that must be addressed by the report.

(4) The child may refuse to submit to any of the examination mentioned in subsection (1)(c) if the child is of sufficient maturity and understanding to make the decision.

(5) Without limiting subsection (1)(d), an order mentioned in that subsection may:

(a) direct a person not to have any direct or indirect contact with the child; or

(b) direct a person not to have any direct or indirect contact with the child except when a specified person or a person belonging to a specified group is present; or

(c) require the CEO to supervise any contact between the child and a specified person.

(6) The Court must not require the CEO to supervise any contact between the child and a specified person unless the CEO agrees to do so.

(7) Section 127 (which is about mediation conference) applies for subsection (1)(e) in relation to proceedings for an assessment order with any necessary changes.

Division 6 Appeal

140 Appeal to Supreme Court

(1) A party to any Court proceedings may appeal to the Supreme Court against any order or decision of the Court (the ***original decision***), other than a temporary protection order.

(2) The appellant must do so by filing a notice of appeal with the Registrar of the Supreme Court within 28 days after the original decision is made.

(3) The notice must specify:

(a) the grounds for the appeal; and

(b) the facts on which the appeal is based.

(4) The appellant must serve a copy of the notice on each of the other parties to the proceedings.

141 Stay of decision

(1) The Supreme Court may stay the original decision to secure the effectiveness of the appeal.

(2) A stay:

(a) may be given on any conditions specified by the Supreme Court; and

(b) operates for the period specified by the Supreme Court; and

(c) may be revoked or amended by the Supreme Court.

(3) However, the period of the stay must not extend beyond the time when the Supreme Court decides the appeal.

142 Hearing appeal

(1) An appeal against an assessment order:

(a) must be conducted as a new hearing; and

(b) is not limited by the evidence before the Court when the order was made.

(2) Except as the Supreme Court otherwise directs, an appeal against any other order or decision must be decided on the evidence before the Court when the order or decision was made.

143 Power of Supreme Court

The Supreme Court may:

(a) confirm the original decision; or

(b) vary the original decision (unless the original decision was a permanent care order); or

(c) set aside the original decision; or

(d) set aside the original decision and replace it with a new order or decision.

Division 6A Legal representation for children

143A Legal representative for child

(1) In proceedings under this Act, the Court may order the appointment of a legal practitioner to represent a child to whom the proceedings relate if the Court considers doing so is in the best interests of the child.

(2) A legal practitioner may represent more than one child in the same proceedings unless the Court orders otherwise.

143B Basis of representation

(1) A legal representative who is appointed on the order of the Court for a child must:

(a) if subsection (2) applies – act on the instructions of the child; or

(b) otherwise:

(i) act in the best interests of the child regardless of any instructions from the child; and

(ii) present the views and wishes of the child to the Court.

(2) This subsection applies:

(a) if the child is of sufficient maturity and understanding to be able to give instructions in relation to the proceedings; and

(b) to the extent that the child gives instructions.

(3) For this section, it is presumed, unless the contrary is proved, that:

(a) a child who is under 10 years of age does not have sufficient maturity and understanding to be able to give instructions in relation to the proceedings; and

(b) a child who is at least 10 years of age does have sufficient maturity and understanding to be able to give instructions in relation to the proceedings.

(4) A legal representative for a child must inform the Court whether or not he or she is acting on instructions from the child.

143C Duties of legal practitioner

(1) A legal representative for a child must:

(a) take all reasonable steps to ascertain whether the child is of sufficient maturity and understanding to be able to give instructions in relation to the proceedings; and

(b) take all reasonable steps to:

(i) if the child is of sufficient maturity and understanding – obtain instructions from the child; or

(ii) otherwise – ascertain the views and wishes of the child for the purposes of section 143B(1)(b)(ii).

(2) A legal representative for a child must take all reasonable steps to actively and professionally represent the child as if the legal practitioner had been engaged by the child.

143D Duration of appointment

(1) A person appointed as the legal representative for a child remains the child's representative until one of the following occurs:

(a) the proceedings for which the appointment was made are finally concluded;

(b) with leave of the Court, the legal representative withdraws as the child's representative;

(c) the Court revokes the appointment.

(2) For this section, proceedings are ***finally concluded*** when one of the following occurs:

(a) the proceedings are discontinued;

(b) the Court makes a final order in the proceedings and either:

(i) the time within which an appeal may be lodged against that order lapses without an appeal being lodged; or

(ii) if an appeal is lodged within that period – the appeal proceedings are finally concluded.

(3) The Court may revoke the appointment of a legal practitioner as the legal representative for a child at any time if satisfied that:

(a) the practitioner has failed to perform his or her duty under section 143C; or

(b) it is otherwise no longer in the best interests of the child for the practitioner to represent the child.

(4) The Court may do so on application by a party or on the Court's own initiative.

143E Regulations

The regulations may make provision for any of the following:

(a) eligibility criteria for appointment under this Division as a legal representative for a child;

(b) responsibilities of, and standards to be met by, legal representatives appointed under this Division.

Division 7 Other procedural matters

144 Application

This Division applies to any Court proceedings other than proceedings for a temporary protection order.

145 Medical practitioner may disclose information

Section 12(2) of the *Evidence Act* does not apply to the proceedings.

Note

Section 12(2) of the Evidence Act prohibits the disclosure by a medical practitioner of certain information.

147 Attendance of child

(1) The Court may:

(a) order a child to attend the proceedings (whether or not the proceedings relate to the child); or

(b) make any other order in relation to the attendance of the child in the proceedings.

(2) In addition, the Court may make orders in relation to the following:

(a) taking a written statement from the child;

(b) presenting to the Court the statement and a report prepared under section 149 for the child.

(3) The Court may:

(a) receive the statement and report as evidence; and

(b) give them the weight the Court considers appropriate.

(4) However, the Court must have regard to the following when acting under subsection (3):

(a) the age of the child;

(b) the intellectual capacity of the child;

(c) the capacity of the child to understand the duty to speak the truth;

(d) the extent to which the child may have been influenced by another person in making the statement or giving information for the report.

(5) The Court must take into account the wishes of the child when making an order under this section.

(6) Apart from this section, the child is not required to give evidence in any Court proceedings.

148 Submissions from other persons

(1) The Court may hear submissions from a person:

(a) who is a family member of the child; or

(b) whom the Court considers is able to inform the Court on matters relevant to the proceedings.

(2) A legal practitioner may make the submissions for the person.

149 Report required by Court

(1) The Court may order a report to be prepared about the wellbeing of the child.

(2) Without limiting subsection (1), the Court may specify in the order one or more of the following:

(a) the person who must prepare the report;

(b) the matters that must be addressed in the report;

(c) the persons who must give information for the report;

(d) that the child, a parent of the child or another person be interviewed for the report.

(3) A person must not contravene the order.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

(5) A person is not civilly or criminally liable, or in breach of any professional code of conduct, for:

(a) giving information for the report; or

(b) preparing the report; or

(c) giving the report to the Court.

(6) The Court must, as soon as possible after receiving the report:

(a) take all reasonable steps to ensure each party to the proceedings is given a copy of the report; and

(b) give such other directions about the report as the Court considers appropriate.

(7) However, the Court may decide not to give a copy of the report to a party to the proceedings if the Court considers it inappropriate to do so in the circumstances.

150 Confidentiality

(1) A person who has a copy of the report must not disclose any information in it to another person.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply if the information is disclosed:

(a) with the leave of the Court; or

(b) to the person's legal representative; or

(c) otherwise for the purposes of this Act.

151 Examination and cross-examination of witnesses

(1) A witness may be examined and cross-examined in any Court proceedings as the Court considers appropriate.

(2) If the Court regards a question directed at a witness as offensive, the Court may:

(a) disallow the question; or

(b) excuse the witness from answering the question.

(3) If the Court regards an examination or cross-examination of a witness as oppressive or repetitive, the Court may:

(a) disallow the examination or cross-examination; or

(b) excuse the witness from the examination or cross-examination.

Part 2.4 Transfer of orders and proceedings

Division 1 Preliminary matters

152 Object of Part

The object of this Part is to enable orders in the nature of protection orders and related proceedings to be transferred between different jurisdictions, so that:

(a) children may be protected under the orders when moving from one jurisdiction to another; and

(b) the proceedings may be determined expeditiously.

153 Definitions

In this Part:

child protection order, for a child, means a final court order made under a child welfare law, or in force under an interstate law, that:

(a) is of the same or a similar nature as a protection order; and

(b) gives responsibility (however described) in relation to the child to:

(i) a Minister of the Crown in right of the Territory or a State; or

(ii) a government department or statutory authority, or the chief executive officer (however described) of, or someone employed or engaged in, the department or authority; or

(iii) an organisation or the chief executive officer (however described) of the organisation.

child protection proceeding means a proceeding in a court under a child welfare law for:

(a) a finding (however described, and includes a finding that a child is in need of protection) that is a prerequisite to the making of a child protection order; or

(b) the making of a child protection order or interim order; or

(c) the extension, variation or revocation of a child protection order.

child welfare law means:

(a) a law of a State that substantially corresponds to the provisions in Part 2.3 that relate to a protection order; or

(b) a child welfare law specified by regulation under section 154(1).

Children's Court, for a State, means a court that has the jurisdiction to hear and determine a child protection proceeding at first instance in the State.

home order means a protection order.

home proceeding means any proceeding in the Court for the making of, or relating to, a protection order.

interim order means:

(a) an order made under section 170; or

(b) an equivalent order made under an interstate law.

interstate law means:

(a) a law of a State that substantially corresponds to the provisions in this Part; or

(b) an interstate law specified by regulation under section 154(2).

interstate officer, for a State, means:

(a) the person holding or occupying the office or position that has the principal responsibility for the protection of children in the State under the child welfare law of the State; or

(b) the person holding or occupying the office or position specified in the regulations under section 154(3) for the State.

parent, for a child to whom a home order or child protection order relates, includes anyone who would have parental responsibility for the child if the order had not been made.

participating State means a State in which an interstate law is in force.

sending State means the State from which a child protection order or child protection proceeding is transferred under an interstate law.

State means:

(a) a State or another Territory of the Commonwealth; or

(b) New Zealand.

working day means:

(a) for a court – a day on which the court's offices are open; or

(b) for the CEO – a day on which the Department's principal office is open.

154 Child welfare law, interstate law and interstate officer

(1) A regulation may specify a law of a State that substantially corresponds to the provisions in Part 2.3 that relate to a protection order to be a child welfare law.

(2) A regulation may specify a law of a State that substantially corresponds to the provisions in this Part to be an interstate law.

(3) A regulation may specify an office or position in a State to be an office or position the holder or occupier of which is the interstate officer of the State.

Division 2 Transfer of child protection orders

Subdivision 1 Transfer by CEO

155 When CEO may transfer order

The CEO may transfer a home order to a participating State if:

(a) the child to whom the order relates is residing, or is about to reside, in the State; and

(b) no application has been made for the transfer under Subdivision 2; and

(c) the order is not subject to an appeal and the time for instituting an appeal has expired; and

(d) the CEO considers the wellbeing of the child will not be adversely affected by the transfer, having regard to the wishes of:

(i) the child; and

(ii) each parent of the child; and

(iii) each person who has access to the child under the order; and

(iv) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child; and

(e) the CEO considers a child protection order having the same or a similar effect as the home order can be made under the child welfare law of the State; and

(f) the CEO considers it appropriate for the interstate officer of the State to exercise powers and responsibilities under a child protection order for the child; and

(g) the interstate officer has consented in writing to the transfer and the matters specified by the CEO under section 156 for the transfer; and

(h) each person whose consent to the transfer is required under section 157 has consented to the transfer.

156 Terms of transfer

(1) The CEO must specify in the decision the period for which the transferred order is to be in force.

(2) The period must be the lesser of:

(a) the period for which the home order would remain in force if it is not transferred; and

(b) the maximum period for which a child protection order of the participating State that has the same or a similar effect as the home order can be in force in the State.

(3) The CEO may also specify in the decision provisions to be included in the transferred order to the extent to which they can be included in a child protection order mentioned in subsection (2)(b).

157 Persons whose consent is required

(1) Consent of each of the following persons to the transfer is required:

(a) if the CEO considers the child has sufficient maturity and understanding to give the consent – the child;

(b) each parent of the child;

(c) each person who has access to the child under the order.

(2) However, consent from a person mentioned in subsection (1)(b) or (c) is not required if:

(a) the person cannot be found after a reasonable attempt has been made to find the person; or

(b) the person is residing, or is about to reside, in the participating State.

(3) In obtaining the consent of a person, the CEO must ensure the person is informed of:

(a) the person's right to apply under section 159 for a review of the CEO's decision and the time within which the application may be made; and

(b) the CEO's right to apply to the Court for an order for the transfer of the home order under section 160.

158 Notice of decision

(1) The CEO must give a notice of the decision to transfer the home order to each of the following persons:

(a) if the child is at least 10 years of age and the CEO considers the child has sufficient maturity and understanding to comprehend the transfer and its consequences – the child;

(b) each parent of the child;

(c) each person who has access to the child under the order;

(d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

(2) The CEO must give the notice:

(a) as soon as practicable; and

(b) in any case not later than 3 working days after the decision is made.

(3) The notice must state:

(a) the date of the decision; and

(b) details of the order that will apply to the child in the participating State; and

(c) that the person is entitled to apply for a review of the decision under section 159 and the time within which the application may be made.

159 Review of decision

(1) A person to whom the CEO has given a notice of the decision may apply to the Court for a review of the decision.

(2) The application must be made within 20 working days after the person receives the notice.

(3) The review is a review:

(a) of the merits of the decision; and

(b) on the grounds specified in the application.

(4) The application stays the decision until the application is decided.

(5) The Court may:

(a) affirm the decision; or

(b) vary the decision; or

(c) set aside the decision; or

(d) set aside the decision and replace it by the Court's decision.

Subdivision 2 Transfer by Court

160 When CEO may apply to Court for transfer

The CEO may apply to the Court for an order transferring a home order to a participating State if:

(a) the child to whom the order relates is residing, or is about to reside, in the State; and

(b) the order is not subject to an appeal and the time for instituting an appeal has expired; and

(c) the CEO considers the wellbeing of the child will not be adversely affected by the transfer, having regard to the wishes of:

(i) the child; and

(ii) each parent of the child; and

(iii) any other person who has access to the child under the order; and

(iv) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child; and

(d) the CEO considers a child protection order having the same or a similar effect as the home order can be made under the child welfare law of the State; and

(e) the CEO considers it appropriate for the interstate officer of the State to exercise powers and responsibilities under a child protection order for the child; and

(f) the interstate officer has consented in writing to the transfer and any of the following matters proposed by the CEO for the transfer:

(i) the period for which the transferred order is to be in force;

(ii) provisions to be included in the transferred order; and

(g) one or more of the following apply:

(i) a person whose consent to the transfer is required under section 157 has refused or failed to do so;

(ii) the CEO considers the transferred order should include provisions different from those that are included in the home order;

(iii) the CEO considers that, if the CEO were to make a decision to transfer the order, a person is likely to apply for a review of the decision under section 159;

(iv) the CEO otherwise considers it appropriate for the Court to decide whether or not to transfer the order.

161 Service of application

The CEO must, as soon as practicable after making the application, give a copy of the application to:

(a) if the child is at least 10 years of age and the CEO considers the child has sufficient maturity and understanding to comprehend the transfer and its consequences – the child; and

(b) each parent of the child; and

(c) anyone else who was a party to the proceedings relating to the home order (other than the CEO); and

(d) each person who has access to the child under the order; and

(e) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

162 When Court may hear application

The Court must not hear the application unless:

(a) the Court is satisfied the CEO is entitled to make the application; and

(b) the CEO has given the Court a report that includes:

(i) a history of the care of the child by the CEO; and

(ii) any criminal history of the child; and

(iii) details of any sentencing order imposed on the child that is in force; and

(iv) any recommendations by the CEO concerning the proposed transfer; and

(v) any other information prescribed by regulation.

163 Court must consider certain matters

The Court must not decide the application unless it has considered:

(a) the report mentioned in section 162(b); and

(b) all of the following matters:

(i) the place or likely place of residence for the child and other persons mentioned in section 161;

(ii) how the wellbeing and interests of the child might be affected by the transfer;

(iii) the matters mentioned in section 160(f)(i) and (ii) that are proposed by the CEO;

(iv) whether a child protection order having the same or a similar effect as the home order can be made under the child welfare law of the participating State;

(v) whether it is appropriate for a child protection order for the child to be in force under the child welfare law of the State;

(vi) whether it is appropriate for the interstate officer of the State to exercise powers and responsibilities under the child protection order;

(vii) wishes expressed by the child;

(viii) wishes expressed by other persons mentioned in section 161.

164 Order of Court

(1) The Court may, by order:

(a) transfer the home order to the participating State; or

(b) dismiss the application.

(2) If the Court transfers the order to the State, the Court must specify in the transferred order the period for which it is to be in force.

(3) The period must not be longer than the maximum period for which a child protection order of the State that has the same or a similar effect as the transferred order can be in force in the State.

(4) The Court may also specify provisions to be included in the transferred order to the extent to which they can be included in a child protection order mentioned in subsection (3).

(5) However, in specifying the matters mentioned in subsections (2) to (4), the Court must be satisfied:

(a) the transferred order will have the same or a similar effect as the home order; and

(b) the interstate officer of the State has consented in writing to the matters; and

(c) the transferred order is in the best interests of the child.

Division 3 Transfer of child protection proceedings

165 When CEO may apply to Court for transfer

The CEO may apply to the Court for an order transferring a home proceeding to a participating State if:

(a) the child to whom the proceeding relates is residing, or is about to reside, in the State; and

(b) the interstate officer of the State has consented in writing to the transfer.

166 Service of application

The CEO must, as soon as practicable after making the application, give a copy of the application to:

(a) if the child is at least 10 years of age and the CEO considers the child has sufficient maturity and understanding to comprehend the transfer and its consequences – the child; and

(b) each parent of the child; and

(c) anyone else who was a party to the home proceeding (other than the CEO); and

(d) each person who has access to the child under an order of the Court; and

(e) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

167 When Court may hear application

The Court must not hear the application unless:

(a) the Court is satisfied the CEO is entitled to make the application; and

(b) the CEO has given the Court a report that includes:

(i) a history of the care of the child by the CEO; and

(ii) any criminal history of the child; and

(iii) details of any sentencing order imposed on the child that is in force; and

(iv) any recommendations by the CEO concerning the proposed transfer; and

(v) any other information prescribed by regulation.

168 Court must consider certain matters

The Court must not decide the application unless the Court has considered:

(a) the report mentioned in section 167(b); and

(b) all of the following matters:

(i) the place of residence or likely place of residence for the child and other persons mentioned in section 166;

(ii) the place where any of the matters giving rise to the proceeding arose;

(iii) how the wellbeing and interests of the child might be affected by the transfer;

(iv) whether any other proceedings relating to the child are pending, or have previously been heard and determined, under the child welfare law of the participating State;

(v) whether it is appropriate for a child protection order for the child to be in force under the child welfare law of the State;

(vi) whether it is appropriate for the interstate officer of the State to exercise powers and responsibilities under the child protection order;

(vii) wishes expressed by the child;

(viii) wishes expressed by other persons mentioned in section 166.

169 Order of Court

(1) The Court may, by order:

(a) transfer the home proceeding to the participating State; or

(b) dismiss the application.

(2) If the Court transfers the proceeding to the State, the proceeding is discontinued in the Court on the registration of the transfer in the Children's Court of the State under the interstate law.

170 Interim order

(1) If the Court transfers the proceeding to the participating State, the Court may also make an interim order providing for one or more of the following:

(a) giving daily care and control of, or parental responsibility for, the child to a specified person under specified conditions;

(b) giving the responsibility for the supervision of the wellbeing of the child to:

(i) the interstate officer of the State; or

(ii) any other specified person in the State to whom the responsibility could be given under the child welfare law of the State.

(2) The interim order remains in force for a specified period not exceeding 30 days.

(3) The Children's Court of the State may extend, vary or revoke the interim order under the interstate law of the State.

Division 4 Registration

Subdivision 1 Transfer of orders and proceedings to Territory

171 Filing of documents for transfer of child protection order

(1) The CEO must file in the Court:

(a) a copy of each child protection order transferred to the Territory under an interstate law; and

(b) the decision or order to transfer the order.

(2) The CEO must do so as soon as practicable after the decision or order is made.

(3) However, the CEO must not do so if, under the interstate law:

(a) the decision or order is subject to a review, appeal or stay; or

(b) the time for seeking a review, or instituting an appeal, of the decision or order has not expired.

172 Filing of documents for transfer of child protection proceeding

(1) The CEO must file in the Court:

(a) a copy of each order made under an interstate law to transfer a child protection proceeding to the Territory; and

(b) any interim order relating to the proceeding.

(2) The CEO must do so as soon as practicable after the order to transfer the proceeding is made.

(3) However, the CEO must not do so if, under the interstate law:

(a) the order is subject to a review, appeal or stay; or

(b) the time for seeking a review, or instituting an appeal, of the order has not expired.

173 Registration of transfer

(1) A registrar of the Court must register the transfer of a child protection order or child protection proceeding if the CEO files documents for the transfer under section 171 or 172.

(2) The registrar must do so in a way decided by the Court.

174 Effect of registration

(1) If the transfer of a child protection order is registered, the transferred order is taken for all purposes to be a home order from the day of the registration.

(2) If the transfer of a child protection proceeding is registered:

(a) the proceeding is taken to have commenced in the Court under Part 2.3 on the day of the registration; and

(b) any interim order filed under section 172(1)(b) relating to the proceeding is taken for all purposes to be an order made by the Court from the day of the registration.

175 Revocation of registration

(1) Any of the following may apply to the Court for the revocation of the registration of the transfer of an order or proceeding under section 173:

(a) the CEO;

(b) if the child to whom the order or proceeding relates is at least 10 years of age – the child;

(c) a parent of the child;

(d) a party to proceedings in the Children's Court of the sending State in relation to the order or proceeding.

(2) A registrar of the Court must, as soon as practicable after the Court has received the application, give a copy of the application to:

(a) the interstate officer of the sending State; and

(b) each person mentioned in subsection (1)(a) to (d), other than the person making the application.

(3) The Court may revoke the registration only if the Court is satisfied, at the time of the registration:

(a) the decision or order to transfer the order or proceeding was subject to a review, appeal or stay under the interstate law of the State; or

(b) the time for seeking such a review, or instituting an appeal, had not expired.

(4) If the Court revokes the registration, a registrar of the Court must arrange for the following to be sent to the Children's Court of the State:

(a) a copy of the revocation;

(b) a copy of each document filed under section 171 or 172 for the transfer.

(5) The revocation does not prevent the re-registration of the transfer at a later time.

176 Notification by registrar of Court

A registrar of the Court must notify an appropriate officer of the Children's Court of a State and the interstate officer of the State of:

(a) the registration under section 173 of the transfer from the State of an order or proceeding; and

(b) any revocation of the registration under section 175.

Subdivision 2 Transfer of orders and proceedings from Territory

177 Effect of registration and revocation of home order in receiving State

(1) A home order transferred to a participating State ceases to have effect on the registration of the transfer in the Children's Court of the State.

(2) However, the home order revives on the revocation of the registration under the interstate law of the State.

(3) The revived order continues to be in force until it would, apart from this Part, have expired.

178 Effect of registration and revocation of home proceeding in receiving State

(1) A home proceeding transferred to a participating State is discontinued on the registration of the transfer in the Children's Court of the State.

(2) However, on the revocation of the registration under the interstate law of the State:

(a) the proceeding continues before the Court; and

(b) the Court may hear the proceeding as if it had not been transferred.

179 Transfer of Court file

(1) On the transfer of a home order or home proceeding to a participating State, a registrar of the Court must send all documents held by the Court for the order or proceeding to the Children's Court of the State.

(2) However, the registrar must not do so if:

(a) the decision or order to transfer the order or proceeding is subject to a review, appeal or stay; or

(b) the time for seeking a review, or instituting an appeal, of the decision or order has not expired.

Division 5 Other matters

180 Hearing and determination of transferred proceeding

In hearing and determining a child protection proceeding transferred to the Court, the Court:

(a) may have regard to the transcript of, or any evidence adduced in, the proceeding in the Children's Court of the sending State that occurred before the transfer (the ***previous proceeding***); but

(b) is not bound by any finding of fact made in the previous proceeding.

181 Disclosure of information

(1) This section applies to any information acquired by the CEO in exercising powers or performing functions under this Act.

(2) The CEO may disclose the information to an interstate officer if the CEO considers the disclosure is necessary for the officer to exercise a power or to perform a function under a child welfare law or interstate law.

182 Discretion of CEO to consent to transfer

(1) If there is a proposal to transfer a child protection order to the Territory under an interstate law, the CEO may:

(a) consent or refuse to consent to the transfer; or

(b) consent or refuse to consent to:

(i) the period for which the order is to be in force; and

(ii) the provisions to be included in the order.

(2) If there is a proposal to transfer a child protection proceeding to the Territory under an interstate law, the CEO may consent or refuse to consent to the transfer.

183 Interstate officer's decision not reviewable

An interstate officer's consent or refusal to consent to the transfer of a home order from the Territory does not give rise to any of the following proceedings against the officer:

(a) proceedings for the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto;

(b) proceedings for the grant of a declaration or an injunction (whether on the ground of absence of jurisdiction or any other ground).

Chapter 3 Prevention of harm and exploitation

Part 3.1 Screening for child-related employment

184 Object of Part

(1) The object of this Part is to ensure individuals who pose an unacceptable risk of harm or exploitation to children are prevented from contacting children through their employment.

(2) The object is to be achieved by:

(a) prohibiting such individuals from being engaged in child-related employment; and

(b) imposing related obligations on people:

(i) who are engaged in child-related employment; or

(ii) who engage others in child-related employment.

185 Child-related employment

(1) A person is engaged in child-related employment if the person is engaged to perform child-related work.

(2) Child-related work is any work that involves or may potentially involve contact with children in connection with any of the following:

(a) child protection services provided by or for the Department;

(b) an education and care service operated under the *Education and Care Services National Law (NT)*;

(c) an educational facility for children, including a government school established under the *Education Act* and a school registered under Part 7 of that Act, other than a facility prescribed by regulation;

(d) juvenile detention centres;

(e) refuges or other residential facilities used by children;

(f) wards of hospitals or any other facilities for health services in which children are ordinarily patients;

(g) clubs, associations or movements (including those that are of a cultural, recreational or sporting nature) with significant child membership or involvement;

(h) religious organisations;

(i) babysitting or childminding services;

(j) fostering of children;

(k) transportation services for children;

(l) private tuition services for children;

(m) counselling or other support services for children;

(n) overnight camps for children;

(o) road crossing services for school children;

(p) any of the following services, activities or facilities that are provided or arranged for children:

(i) gym or play facilities;

(ii) photographic services;

(iii) talent or beauty competitions;

(iv) entertainment or party services;

(q) any other services, activities or facilities prescribed by regulation.

(3) A person may be engaged in child-related employment under a contract of employment or any other contract or arrangement (whether written or unwritten and whether for a reward or not).

(4) Anyone who enters into such a contract or arrangement for a person or body to perform child-related work must be regarded as someone who engages the person or body in child-related employment.

(5) Without limiting subsections (1) to (4), any of the following is a person engaged in child-related employment:

(a) anyone performing child-related work:

(i) as a minister of religion or as part of a religious vocation; or

(ii) as a student for the practical training of an educational or vocational course; or

(iii) as a voluntary worker;

(b) if a body is engaged to perform child-related work, any of the following:

(i) for a body corporate as defined in the Corporations Act 2001 – an officer of the body corporate as defined in that Act;

(ii) for any other body corporate – anyone (however described) who takes part in the management of the body corporate;

(iii) for any unincorporated body or association – a member of the committee of management (however described) of the body or association;

(c) if a partnership is engaged to perform child-related work – a partner in the partnership.

186 Person exempt from operation of Part

Despite section 185, an individual is not engaged in child-related employment if:

(a) the individual:

(i) is engaged as a voluntary worker in a capacity covered by section 185(2)(b), (c) or (g) (other than for work requiring overnight stay); and

(ii) is a parent of at least one of the children with whom the individual may have contact as such a worker; and

(iii) performs work as such a worker under the direct supervision of someone who holds a clearance notice that is in force; and

(iv) is not required by the person who engages the individual as such a worker to hold a clearance notice; or

(b) the individual is less than 15 years of age; or

(c) the individual:

(i) is not a resident of the Territory; and

(ii) is engaged as a voluntary worker to perform child-related work; and

(iii) is so engaged for a total period that does not exceed the limit prescribed by regulation; or

(d) the individual is exempt under the regulations.

187 Obligations for child-related employment

(1) An individual engaged in child-related employment must hold a clearance notice that is in force.

(2) A person must not engage an individual in child-related employment unless the individual holds a clearance notice that is in force.

(3) A person must not contravene subsection (1) or (2).

Maximum penalty: 500 penalty units.

(4) An individual and someone (the ***employer***) who engages or proposes to engage the individual in child-related employment are not required to comply with subsections (1) and (2) for the engagement if:

(a) an application for a clearance notice for the individual has been made but the Authority has not decided the application; and

(b) a period of exemption specified by the CEO for the individual and employer has not expired.

(5) The CEO may specify the period only if:

(a) the employer:

(i) has applied to the CEO for the exemption in the approved form; and

(ii) has given any additional information for the application requested by the CEO; and

(b) the CEO considers it appropriate to grant the exemption having regard to the circumstances of the engagement (including any practice of the employer to safeguard the children concerned).

(6) The period may be extended by the CEO as the CEO considers appropriate.

188 Application for clearance notice

(1) Any of the following may apply to the Authority for the issue of a clearance notice to an individual (the ***candidate***):

(a) the candidate;

(b) a person who engages, or proposes to engage, the candidate in child-related employment.

(2) The application must be:

(a) in the approved form; and

(b) accompanied by any proof of the identity of the candidate required by regulation; and

(c) accompanied by a statement of the candidate that:

(i) if the applicant is not the candidate – authorises the making of the application; and

(ii) authorises the Commissioner of Police and anyone prescribed by regulation to give information about the candidate to the Authority.

(3) The candidate must give the Authority any additional information for the application requested by the Authority.

189 Decisions on application

(1) If the candidate has been convicted of an offence, or has a criminal history, that is prescribed by regulation, the Authority:

(a) must not issue a clearance notice to the candidate; and

(b) must, as soon as practicable, give notice of the Authority's decision to the candidate and the applicant for the clearance notice (if the applicant is not the candidate).

(2) If subsection (1) does not apply, the Authority must, having regard to the administrative guidelines, decide whether the candidate poses an unacceptable risk of harm or exploitation to children.

(3) If the Authority decides the candidate does not pose such a risk, the Authority:

(a) must issue a clearance notice to the candidate; and

(b) must, as soon as practicable, give notice of the Authority's decision to the candidate and applicant.

(4) If the Authority decides the candidate poses such a risk, the Authority:

(a) must not issue a clearance notice to the candidate; and

(b) must, as soon as practicable, give notice of the Authority's decision to the candidate and applicant.

(5) A notice of the Authority's decision must:

(a) be in the approved form; and

(b) be accompanied by the reasons for the decision; and

(c) for a decision under subsection (1) or (4), state:

(i) that the candidate and applicant are entitled to apply for a review of the decision under section 194; and

(ii) the time within which the application may be made.

(6) Without limiting subsection (1), the regulations may prescribe for the subsection an offence that is a sexual offence.

190 Provision of information

(1) Despite any law of the Territory:

(a) the Commissioner of Police and anyone else may give the Authority any information about the criminal history of the candidate; and

(b) the Authority may collect and maintain the information.

(2) A person acting in good faith in giving the information is not civilly or criminally liable, or in breach of any professional code of conduct, for giving the information.

191 Administrative guidelines

(1) The CEO may make administrative guidelines for the making of a decision by the Authority.

(2) Without limiting subsection (1), the guidelines may provide for:

(a) matters the Authority must take into account in making the decision; and

(b) how those matters may be taken into account.

(3) Without limiting subsection (2), the guidelines may provide for one or more of the following to be taken into account in deciding whether or not to issue a clearance notice to a person:

(a) the whole of the person's criminal history;

(b) in relation to any offence the person has committed:

(i) the nature and gravity of the offence; and

(ii) the relevance of the offence to any child-related employment; and

(iii) the age of the victim when the offence was committed; and

(iv) the time that has elapsed since the commission of the offence;

(c) in relation to any alleged commission of an offence by the person – the risk of harm or exploitation to children posed by the person in view of the allegation and other related circumstances (including any patterns of the person's behaviour);

(d) any other matters the Authority may reasonably take into account in the circumstances.

(4) The CEO must, by *Gazette* notice, notify the making of the guidelines.

192 When clearance notice ceases to be in force

(1) A clearance notice ceases to be in force:

(a) at the end of 2 years, or a longer period specified by regulation, after the notice is issued; or

(b) if it is revoked at an earlier time – at that time.

(2) The Authority may revoke the notice if:

(a) the Authority becomes aware of any information that:

(i) was not available to the Authority when the notice was issued; and

(ii) would have resulted in a decision not to issue the notice if it had been available to the Authority at that time; or

(b) the Authority considers the person holding the notice is no longer entitled to be issued the notice because of a change in the person's circumstances.

(3) If the Authority revokes the notice, the Authority must give notice of the revocation and the reasons for the revocation to:

(a) the person; and

(b) the applicant for the clearance notice (if the applicant was not the person).

(4) The notice of the revocation must state:

(a) that the person and applicant are entitled to apply for a review of the decision under section 194; and

(b) the time within which the application may be made.

(5) In addition, the Authority may give written notice of the revocation to anyone who engages or proposes to engage the person in child-related employment.

193 Change of circumstances requiring imposition of conditions

(1) A person holding a clearance notice that is in force must, as soon as practicable after a change of circumstances prescribed by regulation has occurred, give written notice of the change to:

(a) the Authority; and

(b) everyone who engages or proposes to engage the person in child-related employment.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(2) After becoming aware of the change (whether because of subsection (1) or not), the Authority may specify conditions for the clearance notice by notice given to the following:

(a) the person;

(b) the applicant for the clearance notice (if the applicant was not the person);

(c) anyone who engages or proposes to engage the person in child-related employment.

(3) The Authority must have regard to the administrative guidelines when giving the notice.

(4) The notice must:

(a) be accompanied by the Authority's reasons for specifying the conditions; and

(b) state that the person and applicant are entitled to apply for a review of the decision under section 194; and

(c) the time within which the application may be made.

(5) Without limiting subsection (2), the Authority may specify any of the following conditions for the clearance notice under that subsection:

(a) that the person must not be engaged in child-related employment for a specified period;

(b) that the person must not be engaged in a specified class of child-related employment for a specified period;

(c) that the person may be engaged in child-related employment or a specified class of child-related employment only under specified conditions.

(6) A person must not contravene any of the specified conditions.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(7) It is a defence to a prosecution for an offence against subsection (6) if the defendant has a reasonable excuse.

194 Local Court may review decision of Authority

(1) Any of the following decisions about a clearance notice may be reviewed under this section:

(a) a decision under section 189(1) or (4) not to issue the notice;

(b) a decision under section 192(2) to revoke the notice;

(c) a decision under section 193(2) to specify conditions for the notice;

(d) any other decision of the Authority about the notice specified by regulation.

(2) An application for the review may be made by any of the following persons:

(a) for a decision mentioned in subsection (1)(a) – the candidate or the applicant for the notice;

(b) for any other decision – the person holding, or the applicant for, the notice.

(3) The application must be made to the Local Court within 28 working days after the person is notified of the decision.

(4) The application does not affect the operation or implementation of the decision.

(5) However, the Local Court may make another decision staying or otherwise affecting the operation or implementation of so much of the decision as it considers appropriate to effectively decide the application.

(6) A decision made under subsection (5):

(a) is subject to the conditions specified by the Local Court; and

(b) has effect:

(i) for the period specified by the Local Court; and

(ii) if no period is specified by the Local Court – until the application is decided.

(7) The review:

(a) must be conducted as a new hearing; and

(b) is not limited by the material before the Authority.

(8) The Local Court may:

(a) affirm the decision; or

(b) vary the decision; or

(c) set aside the decision; or

(d) set aside the decision and replace it by the Local Court's decision.

(9) The Local Court may make any order about costs.

195 Confidential information

(1) A person who has acquired information in exercising a power or performing a function under this Part is guilty of an offence if the person:

(a) discloses the information to someone; or

(b) does something that results in disclosing the information to someone and is reckless as to whether doing the thing would result in the disclosure; or

(c) uses the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply to:

(a) a disclosure or use of the information by the person in exercising a power or performing a function under this Part; or

(b) a disclosure of the information to a court or tribunal; or

(c) a disclosure or use of the information that is otherwise required or authorised by law.

196 Screening Authority

(1) There is to be a Screening Authority.

(2) The Authority consists of one or more members appointed by the Minister.

197 Regulations

The regulations may make provision, consistent with this Part, about the following:

(a) any matters relating to a clearance notice;

(b) the appointment of the members of the Authority;

(c) the procedure for the making of a decision by the Authority;

(d) any other matters arising from the operation of this Part.

Part 3.2 Employment of children

198 Objects of Part

The objects of this Part are:

(a) to prevent the exploitation of children in their employment; and

(b) to ensure the wellbeing of children who are in employment.

199 Interaction with *Education Act*

This Part does not affect the operation of section 161 of the *Education Act*.

200 Definitions

In this Part:

employ, for a child, means to engage the child to perform work under a contract of employment or any other contract or arrangement (whether written or unwritten and whether for a reward or not).

employer, of a child, means a person who employs the child.

201 CEO's power to restrict employment of children

(1) This section applies if:

(a) a child is employed; and

(b) the CEO is of the opinion that:

(i) the child suffers, or is likely to suffer, exploitation because of the employment; or

(ii) the wellbeing of the child is, or is likely to be, jeopardised because of the employment.

(2) The CEO may, by written notice given to a parent of the child:

(a) prohibit the child from being so employed; or

(b) prohibit the child from employment generally; or

(c) prohibit the child from specified types of employment; or

(d) impose specified conditions on the employment of the child (whether generally or in relation to specified types of employment).

(3) A parent of the child must not permit or require the child to be employed in contravention of the notice.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

(5) The CEO:

(a) must give a copy of the notice to the child; and

(b) may give a copy of the notice to an employer of the child.

(6) An employer of the child who is given a copy of the notice must comply with the notice.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(7) It is a defence to a prosecution for an offence against subsection (6) if the defendant has a reasonable excuse.

(8) The notice must:

(a) be accompanied by the reasons of the CEO's decision; and

(b) state that a parent of the child is entitled to apply for a review of the decision under section 206 and the time within which the application may be made.

202 Misleading information about child's age

(1) This section applies if a person employs, or is considering employing, a child.

(2) A parent of the child:

(a) must not give the person any information about the child's age that the parent knows to be misleading in a material particular; or

(b) must not permit or require the child to give the person any information that the parent knows to be misleading in a material particular.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

203 Obligation of employers and parents

(1) An employer of a child is guilty of an offence if:

(a) the employer requires the child to perform any work at any time after 10 pm at night and before 6 am in the morning; and

(b) the child is less than 15 years of age.

Maximum penalty: 400 penalty units.

(2) An employer of a child must not require the child to perform any work that is harmful, or likely to be harmful, to the child's physical, mental or emotional wellbeing.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(3) An employer of a child must not require the child to perform any work that involves the exploitation of the child.

Maximum penalty: 800 penalty units or imprisonment for 4 years.

(4) A parent of a child is guilty of an offence if:

(a) the parent permits or requires the child to perform any work at any time after 10 pm at night and before 6 am in the morning; and

(b) the child is less than 15 years of age.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

(5) A parent of a child must not permit or require the child to perform any work that is harmful, or likely to be harmful, to the child's physical, mental or emotional wellbeing.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(6) A parent of a child must not permit or require the child to perform any work that involves the exploitation of the child.

Maximum penalty: 800 penalty units or imprisonment for 4 years.

204 Inspections

(1) This section applies if an authorised officer reasonably believes that a child is employed at a place.

(1A) For the purposes of monitoring compliance with this Part, the officer may, at any reasonable time, do one or more the following:

(a) enter the place;

(b) inspect the place and any facilities at the place;

(c) require any person at the place to give specified information, or produce specified records, to the officer;

(d) operate any electronic equipment at the place to retrieve information or records;

(e) make extracts or copies of the records produced or retrieved under paragraph (c) or (d).

(2) A person must comply with a requirement given to the person for subsection (1A)(c).

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

(4) If the officer enters the place without producing the officer's identity card when requested to do so:

(a) the officer may not stay at the place; and

(b) a person is not required to comply with a requirement given to the person for subsection (1A)(c).

205 Authorised officer may require provision of information

(1) An authorised officer may, by written notice, require a person who employs a child to give the officer specified information about the employment.

(2) The person must comply with the requirement within 14 days after receiving the notice.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

206 Local Court may review decision

(1) A parent of a child in relation to whom a notice is given by the CEO under section 201(2) may apply for a review of the decision in the notice.

(2) The application must be made to the Local Court within 28 working days after the parent is given the notice.

(3) The application does not affect the operation or implementation of the decision.

(4) However, the Local Court may make another decision staying or otherwise affecting the operation or implementation of so much of the decision as it considers appropriate to effectively decide the application.

(5) A decision under subsection (4):

(a) is subject to the conditions specified by the Local Court; and

(b) has effect:

(i) for the period specified by the Local Court; and

(ii) if no period is specified by the Local Court – until the application is decided.

(6) The review:

(a) must be conducted as a new hearing; and

(b) is not limited by the material before the CEO.

(7) The Local Court may:

(a) affirm the decision; or

(b) vary the decision; or

(c) set aside the decision; or

(d) set aside the decision and replace it by the Local Court's decision.

(8) The Local Court may make any order about costs.

Part 3.3 Prevention of child deaths

207 Object of Part

The object of this Part is to assist in the prevention and reduction of child deaths through:

(a) maintaining a database on child deaths; and

(b) conducting research about child deaths, and diseases and accidents involving children; and

(c) the development of appropriate policy to deal with such deaths, diseases and accidents.

208 Child deaths

A child death is:

(a) the death of a child who usually resided in the Territory (whether the death occurred in the Territory or not); or

(b) a still-birth as defined in the *Births, Deaths and Marriages Registration Act* that occurred in the Territory.

209 Establishment of Committee

(1) There is to be a Child Deaths Review and Prevention Committee.

(2) The Committee consists of at least 10 but not more than 16 members.

(3) Each member must be:

(a) someone who has qualifications or experience relating to the functions of the Committee; and

(b) appointed by the Minister in writing for a term not exceeding 2 years.

(4) The Minister must:

(a) appoint one member to be the Convenor of the Committee; and

(b) appoint another member to be the Deputy Convenor of the Committee.

(5) At least 2 members must be Aboriginal persons.

(6) One member must be a deputy coroner nominated by the Territory Coroner for this section.

(7) A member is eligible for re-appointment.

(8) In this section:

deputy coroner means a deputy coroner as defined in the *Coroners Act*.

Territory Coroner means the Territory Coroner as defined in the *Coroners Act*.

210 Functions of Committee

The Committee has the following functions:

(a) to establish and maintain the Child Deaths Register;

(b) to conduct or sponsor research into child deaths, diseases and accidents involving children, and other related matters (such as childhood morbidity and mortality), whether alone or with others;

(c) to raise public awareness about a matter mentioned in paragraph (b), including, for example, any of the following:

(i) the death rate of children;

(ii) the causes and nature of child deaths and of diseases and accidents involving children;

(iii) the prevention or reduction of such deaths, diseases and accidents;

(d) to make recommendations about a matter mentioned in paragraph (b);

(e) to monitor the implementation of the recommendations;

(f) to contribute to any national database on child deaths in Australia;

(g) to enter into an arrangement for the sharing of information with anyone in Australia that has functions similar to those of the Committee;

(h) to perform any other functions relating to the object of this Part as the Minister directs.

211 Provision of information to Committee

(1) Any of the following persons must, on the Committee's request, give specified information to the Committee for any of its functions:

(a) the Commissioner of Police;

(b) the Registrar of Births, Deaths and Marriages;

(c) a coroner;

(d) a service provider for a vulnerable child;

(e) a health practitioner;

(f) a person in charge of a facility for health services in which children are ordinarily patients;

(g) an operator of child-related services;

(h) an approved provider of an education and care service operated under the *Education and Care Services National Law (NT)*.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) It is a defence to a prosecution for an offence against subsection (1) if:

(a) the defendant has a reasonable excuse; or

(b) the Commissioner of Police certifies in writing that compliance with the request would:

(i) prejudice the investigation of any unlawful conduct; or

(ii) disclose a confidential source of information in relation to the administration of law; or

(iii) prejudice the effectiveness of a method or procedure in relation to the administration of law; or

(iv) facilitate a person's escape from lawful custody; or

(v) endanger the safety of a person.

(3) A person acting in good faith in giving information to the Committee is not civilly or criminally liable, or in breach of any professional code of conduct, for giving the information.

212 Child Deaths Register

(1) There is to be a Child Deaths Register.

(2) The Register is a database of information concerning child deaths.

(3) Without limiting subsection (2), the Register may include information on:

(a) incidences of child deaths; and

(b) the causes, patterns and trends of child deaths.

213 Annual report

(1) At the end of each financial year, the Committee must prepare a report about the operation of the Committee during that year.

(2) The report must contain details about:

(a) the Committee's activities during that year, including:

(i) the development of the Register during that year; and

(ii) any recommendations made by the Committee during that year; and

(b) the implementation during that year of any recommendations made by the Committee.

(3) The Committee must, by 31 October following the end of that year, give the report to the Minister.

(4) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving the report.

214 Report about research

(1) The Committee may prepare reports about research conducted or sponsored by the Committee (whether alone or with others).

(2) The Committee must give the reports to the Minister.

(3) The Minister must table a copy of each of the reports in the Legislative Assembly within 6 sitting days after receiving the report.

215 Advisors to Committee

(1) The Minister may, on the Convenor's recommendation, appoint persons to be advisors to the Committee.

(2) The Convenor may only recommend a person who has qualifications or experience relating to:

(a) a function of the Committee; or

(b) health care, child development or protection, or research methodology.

(3) An advisor may be appointed for:

(a) the duration of a project specified in the appointment; or

(b) a term not exceeding 2 years specified in the appointment.

(4) An advisor is eligible, on the recommendation of the Convenor, for re-appointment.

(5) An advisor must assist the Committee in performing the Committee's functions as specified in the appointment.

(6) Without limiting subsection (5), the appointment may specify that the advisor must conduct specified research.

216 Deputy Convenor

The Deputy Convenor must act in the office of Convenor if:

(a) the Convenor is unable to exercise the Convenor's powers or perform the Convenor's functions; or

(b) the office of Convenor is vacant.

217 Vacation of office of member or advisor

A member or advisor vacates his or her office if:

(a) the term of the appointment of the member or advisor expires; or

(b) the member or advisor resigns the office in writing given to the Minister; or

(c) the appointment is terminated under section 218; or

(d) the member or advisor dies.

218 Termination of appointment

(1) The Minister must terminate a person's appointment as a member or advisor if:

(a) the person contravenes section 221; or

(b) for a person appointed as a member:

(i) the person has been absent (except on leave granted by the Minister) from 3 consecutive meetings of the Committee; or

(ii) the person contravenes section 220.

(2) In addition, the Minister may terminate the appointment:

(a) on the ground of misbehaviour; or

(b) on the ground the person becomes physically or mentally incapable of satisfactorily performing the duties of the appointment.

(3) Furthermore, the appointment is terminated if:

(a) the person:

(i) becomes bankrupt; or

(ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with creditors or makes an assignment of the person's remuneration for their benefit; or

(b) is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or

(c) is found guilty by a court outside the Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

(4) A termination under subsection (1) or (2) must be by writing given to the person.

219 Meetings of Committee

(1) The Committee must meet at least 3 times in each year.

(2) In a meeting of the Committee, the number of members that is equal to half of the members plus one constitutes a quorum.

(3) A meeting of the Committee must be presided by:

(a) the Convenor; or

(b) in the absence of the Convenor – the Deputy Convenor; or

(c) in the absence of both the Convenor and the Deputy Convenor – a member elected by the members present at the meeting.

220 Disclosure of interest

(1) A member who has a direct or indirect interest in a matter to be considered by the Committee must disclose the interest to the Committee.

(2) The disclosure must be recorded in the Committee's minutes.

(3) The member:

(a) must not take Part in any deliberation or decision of the Committee about the matter; and

(b) must be disregarded for the purposes of constituting the quorum of the Committee for the deliberation or decision.

(4) The Committee may decide subsection (3) does not apply to the matter.

(5) However, the decision must be deliberated and voted on in the absence of the member.

221 Confidential information

(1) A person who has acquired information in exercising a power or performing a function under this Part is guilty of an offence if the person:

(a) discloses the information to someone; or

(b) does something that results in disclosing the information to someone and is reckless as to whether doing the thing would result in the disclosure; or

(c) uses the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply to:

(a) a disclosure or use of the information by a person in exercising a power or performing a function under this Part; or

(b) a disclosure or use of the information for any of the following purposes authorised by the Minister:

(i) research relating to the object of this Part;

(ii) an inquiry or investigation conducted by a coroner, the Police Force or another law enforcement agency;

(iii) a purpose specified by regulation; or

(c) a disclosure of the information to a court or tribunal; or

(d) a disclosure or use of the information that is otherwise required or authorised by law.

222 Review of operation of Part

(1) The Minister must conduct a review of the operation of this Part within 3 years after the commencement of this Part.

(2) The review must determine:

(a) the extent to which the operation of this Part has met the object of this Part; and

(b) whether or not any amendment to this Part should be made.

Chapter 5 Administration

Part 5.1A Sharing information for safety and wellbeing of children

Division 1 Preliminary matters

293A Object and underlying principle of Part

(1) The object of this Part is to ensure the safety and wellbeing of children by enabling particular persons and bodies having responsibilities for a child to request or give particular information about the child.

(2) For achieving that object, it is the underlying principle of this Part that rules about protecting confidentiality and privacy of individuals should not prevent the sharing of information for ensuring the safety and wellbeing of children.

(3) Anyone exercising a power or performing a function under this Part must, as far as practicable, uphold the principle.

293B Information about a child

(1) For this Part, ***information*** about a child is any information that relates to the safety or wellbeing of the child.

(2) Without limiting subsection (1), ***information*** about a child includes information about a person other than the child (for example, a family member of the child) that directly or indirectly relates to the safety or wellbeing of the child.

293C Information sharing authorities

(1) For this Part, each of the following is an ***information sharing authority***:

(a) the CEO;

(b) a person who, as the Chief Executive Officer of an Agency or a public sector employee, is acting under a law of the Territory in relation to a child;

(c) a carer who is acting under this Act in relation to a child;

(d) an approved provider of an education and care service operated under the *Education and Care Services National Law (NT)* who provides, or is required to provide, services in relation to a child;

(e) a person in charge of an organisation that receives funding from the Commonwealth or Territory to provide a service, or perform a function, for or in connection with children;

(f) a person in charge of an organisation that receives funding from the Territory under an agreement to provide drug or alcohol treatment;

(g) a person employed or engaged (for a fee) by an organisation mentioned in paragraph (e) or (f) in relation to providing the service or treatment, or performing the function, mentioned in that paragraph;

(h) the principal, as defined in section 5 of the *Education Act*, of:

(i) a government school declared under that Act; or

(ii) a non-government school registered under that Act;

(i) a teacher registered under the *Teacher Registration (Northern Territory) Act*;

(j) a person in charge of:

(i) a hospital as defined in section 5 of the *Medical Services Act*; or

(ii) a private hospital as defined in section 4A of the *Private Hospitals Act*;

(k) a person in charge of an approved treatment facility as defined in section 4 of the *Mental Health and Related Services Act*;

(l) a person registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student);

(m) a provider of services as defined in section 2(1) of the *Disability Services Act*;

(n) a lawyer;

(o) a police officer;

(p) a person prescribed by regulation.

(2) The regulations may specify that a person who would otherwise be an information sharing authority under subsection (1) is not an information sharing authority.

Division 2 Information sharing framework

293D Giving information without request

(1) An information sharing authority (the ***provider***) may give any information about a child, or a group of children, to another information sharing authority (the ***recipient***).

(2) The provider may do so only if:

(a) the provider specifies the child or group of children when giving the information; and

(b) no request for the information has been made by the recipient to the provider under section 293E; and

(c) the provider reasonably believes that the information would assist the recipient to do any of the following that relates to the safety or wellbeing of the child or children:

(i) make a decision, assessment or plan;

(ii) initiate or conduct an investigation;

(iii) provide a service or perform a function.

293E Giving information on request

(1) An information sharing authority (the ***requesting authority***) may request another information sharing authority (the ***requested authority***) to give to the requesting authority specified information (the ***requested information***):

(a) held by the requested authority; and

(b) that is information about a child, or a group of children, that is specified in the request.

(2) The requesting authority may do so only if the requesting authority reasonably believes that the requested information would assist the requesting authority to do any of the following that relates to the safety or wellbeing of the child or children:

(a) make a decision, assessment or plan;

(b) initiate or conduct an investigation;

(c) provide a service or perform a function.

(3) Subject to subsection (5), the requested authority must:

(a) give so much of the requested information to the requesting authority as the requested authority reasonably believes would assist the requesting authority to do a thing mentioned in subsection (2) that relates to the safety or wellbeing of the child or children; and

(b) refuse to give any requested information in relation to which the requested authority does not hold that belief.

(4) For the purposes of forming the belief mentioned in subsection (3)(a):

(a) the requested authority may ask the requesting authority to give the requested authority further information about the request; and

(b) the requesting authority may give the further information.

(5) Despite subsection (3), the requested authority may refuse to give the requesting authority so much of the requested information as is covered by any of the following:

(a) the requested authority reasonably believes that giving the information could:

(i) prejudice the investigation of a contravention (or possible contravention) of a law in force in the Territory; or

(ii) prejudice a coronial inquest or inquiry; or

(iii) prejudice any proceedings in a court or tribunal; or

(iv) contravene any legal professional or client legal privilege; or

(v) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained; or

(vi) endanger a person's life or physical safety; or

(vii) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law in force in the Territory;

(b) a circumstance prescribed by regulation exists in relation to the information.

(6) The requested authority must give the requesting authority written reasons for refusing to give any or all of the requested information.

Division 3 Other matters

293F Protection of persons giving information

A person acting in good faith in giving information under this Part is not civilly or criminally liable, or in breach of any professional code of conduct, for giving the information.

293G Restriction on use or disclosure of information

(1) An information sharing authority given information under this Part must not use or disclose the information for any purpose not related to the safety or wellbeing of a child to whom the information relates.

(2) To avoid doubt, a reference in subsection (1) to a child includes a reference to a child other than the child, or a member of a group of children, for whom the information is given under this Part.

(3) Subsection (1) has effect except as otherwise provided by another law in force in the Territory.

293H Administrative guidelines

(1) The CEO must make administrative guidelines for the operation of this Part.

(2) Without limiting subsection (1), the CEO must, within 28 working days after the commencement of this section, make administrative guidelines providing for the following:

(a) a matter that may be taken into account in forming the belief mentioned in section 293D(2)(c) or 293E(2) or (3)(a);

(b) circumstances in which an information sharing authority should consider obtaining the consent of a person before giving information about the person under this Part.

(3) The CEO must publish administrative guidelines made under this section in a way decided by the CEO (including, for example, on the Internet) as soon as practicable after making them.

293J Interactions with other laws and other provisions of Act

(1) This Part has effect despite the operation of any other law of the Territory that prohibits or restricts the disclosure of information.

(2) This Part does not affect the operation of any other provision in this Act that relates to giving information about a child.

Example for subsection (2)

This Part does not affect the operation of section 34.

Part 5.2 Review teams

294 Object of Part

The object of this Part is to ensure:

(a) the operation of Chapter 2 is consistent with the objects and underlying principles of this Act; and

(b) services provided for Chapter 2 are of a high standard.

295 Establishment

(1) The CEO may establish review teams by *Gazette* notice.

(2) A team:

(a) consists of members appointed by the CEO; and

(b) must have at least 3 members.

(3) A team member must represent at least one of the following:

(a) the Police Force;

(b) an Agency having responsibility relating to health, education, housing, family or children;

(c) an organisation promoting any of the following:

(i) the wellbeing of children;

(ii) the interests of people with disabilities;

(iii) the interests of Aboriginal people;

(iv) multiculturalism.

296 Functions of team

A team has one or more of the following functions as specified in the *Gazette* notice:

(a) to conduct a review and make recommendations about any of the following (a ***Chapter 2 matter***):

(i) the operation of specified provisions of Chapter 2 (whether generally or in relation to a specified locality);

(ii) the provision of specified services in connection with that operation;

(b) to conduct a review of the implementation of the recommendations;

(c) to perform any other specified function in relation to a Chapter 2 matter.

297 Reports of team

(1) A team must, as soon as practicable after each of its meetings:

(a) give the CEO a report of its current operation; and

(b) give the Commissioner a copy of the report.

(2) The CEO must, as soon as practicable after the end of a financial year:

(a) give the Minister an annual report about the operation of all the teams during that year; and

(b) give the Commissioner a copy of the report.

298 Regulations

The regulations may make provision, consistent with this Part, about the following:

(a) the nomination of candidates for the appointment of team members;

(b) the making of operational guidelines for a team;

(c) functions of a team;

(d) meetings of a team;

(e) any other matters relating to a team.

Part 5.3 General offences

299 Obstruction

(1) A person must not obstruct a person:

(a) in exercising or attempting to exercise a power under this Act; or

(b) in performing or attempting to perform a function under this Act.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) In this section:

obstruct includes resist and hinder.

300 Impersonating officer

A person must not falsely represent, by words or conduct, that the person or someone else is an authorised officer.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

301 Disclosure of child's identity

(1) A person must not publish any material that may identify someone who is a child:

(a) in the CEO's care; or

(b) for whom:

(i) an application for a temporary protection order, assessment order, protection order or permanent care order has been made; or

(ii) such an order is in force; or

(c) involved (whether as a victim or not) in a sexual offence or alleged to have been so involved in a sexual offence.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply if the publication is permitted or authorised under this Act or any other law in force in the Territory.

Part 5.4 Other administrative matters

302 Approved forms

(1) The CEO:

(a) must approve forms for a provision in this Act if the provision requires a document to be made in the approved form; and

(b) may approve forms for any other document required for this Act.

(2) If a form is approved for a document under subsection (1)(b), the document must be made in the approved form.

(3) An approved form for a document must be consistent with any other requirements specified for the document in this Act.

303 Delegation

The CEO may, in writing, delegate any of the CEO's powers and functions to a person who is:

(a) an authorised officer; or

(b) a public sector employee.

304 Authorised officers

(1) An authorised officer is:

(a) a person appointed by the CEO as an authorised officer; or

(b) a police officer.

(2) An authorised officer appointed under subsection (1)(a) has the powers and functions of an authorised officer under this Act as specified in the appointment.

(3) A police officer has the powers and functions of an authorised officer under sections 35(3), 37, 38, 52, 56 to 64, 84, 85 and 108.

Note

A police officer may exercise certain powers under this Act as a police officer and not as an authorised officer, see, for example, sections 33 and 36.

305 Identity cards

(1) This section applies to a person who:

(a) is an authorised officer; but

(b) is not a police officer.

(2) The CEO must issue an identity card to the officer.

(3) The card must:

(a) specify the officer's name and office; and

(b) specify the officer's powers and functions; and

(c) contain:

(i) the signature of the officer; and

(ii) a recent photograph of the officer; and

(iii) the verification of the signature and photograph by the CEO.

(4) The card ceases to be in force when the person ceases to be an authorised officer.

(5) The person must return the card to the CEO within one month after the cessation.

Maximum penalty: 20 penalty units.

306 Misleading documents

(1) A person must not, for the purposes of this Act, give someone (the ***recipient***) a document that contains information the person knows to be misleading in a material particular.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) However, subsection (1) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the recipient's attention; and

(b) to the extent the person can reasonably do so – gives the recipient the information necessary to correct the document.

307 Misleading information

A person must not, for the purposes of this Act, give someone any information that the person knows to be misleading in a material particular.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

308 Confidential information

(1) A person is guilty of an offence if the person:

(a) discloses to someone any information acquired by the person in exercising a power or performing a function as an authorised officer; or

(b) does something that results in disclosing the information to someone and is reckless as to whether doing the thing would result in the disclosure; or

(c) uses the information; or

(d) publishes all or part of a document obtained by the person in exercising a power or performing a function as an authorised officer; or

(e) produces to a court or tribunal a thing obtained by the person in exercising a power or performing a function as an authorised officer.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Subsection (1) does not apply to:

(a) anything done by a person in exercising a power or performing a function under this Act; or

(b) anything done by a person for administering this Act; or

(c) any disclosure or production to:

(i) someone who is the subject of the information, document or thing (the ***relevant party***); or

(ii) someone with the consent of the relevant party (whether or not the consent has been given expressly); or

(iii) someone approved by the CEO on the basis the disclosure or production is made in the public interest; or

(iv) someone approved by the CEO for research purposes on the basis the confidentiality regarding the information, document or thing, or the identity of the relevant party, will be preserved; or

(d) anything done in accordance with the regulations.

309 Protection from liability

(1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith:

(a) in the exercise or purported exercise of a power as an authorised officer under this Act; or

(b) in the performance or purported performance of a function as an authorised officer under this Act.

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

310 Regulations

(1) The Administrator may make regulations under this Act.

(2) The regulations may:

(a) prescribe fees payable under this Act; and

(b) apply, adopt or incorporate (with or without changes) a matter contained in another instrument as in force or existing at a particular time or from time to time; and

(c) prescribe a fine not exceeding 200 penalty units for an offence against the regulations; and

(d) provide for the enforcement of a code of practice, including by providing that a contravention of the code is an offence against the regulations; and

(e) provide for an offence against the regulations to be an offence of strict liability.

Part 5.5 Repeals and transitional matters for Care and Protection of Children Act 2007

Division 1 Repeals

311 Repeals

The Acts specified in the Schedule are repealed.

Division 2 Transitional matters for Chapter 2

312 Definitions

In this Division:

commencement means the commencement of section 311.

Family Matters Court means the Family Matters Court established by section 24 of the Welfare Act.

Welfare Act means the Community Welfare Act as in force from time to time before the commencement.

313 Arrangements for assistance

An arrangement in force under section 8 of the Welfare Act immediately before the commencement has effect for the remainder of its term as if:

(a) it had been made by the CEO under section 44(1) of this Act; and

(b) it had complied with section 44(2) of this Act.

314 Investigations

(1) An investigation under section 13 of the Welfare Act started before the commencement may continue as if it were an investigation under section 36 of this Act.

(2) An investigation under section 16 of the Welfare Act started before the commencement may continue as if it were an investigation under section 35 of this Act.

315 Temporary custody

An agreement in force under section 62 of the Welfare Act immediately before the commencement has effect for the remainder of its term as if it were a temporary placement arrangement under section 46 of this Act.

316 Foster parent

A person who was a registered foster parent under section 63 of the Welfare Act immediately before the commencement is taken to have been approved, for the remainder of the term of the registration, as a carer under section 78(1)(a)(iii) of this Act.

317 Foster care

An agreement in force under section 64 of the Welfare Act immediately before the commencement has effect for the remainder of its term as if it were a placement arrangement under section 78 of this Act.

318 Child in custody or detention

(1) This section applies to a child if:

(a) a person:

(i) had taken the child into custody under section 11 of the Welfare Act; or

(ii) had detained the child in a hospital under section 15 of the Welfare Act; and

(b) the child was so in custody or detained immediately before the commencement.

(2) The person must notify the CEO about the custody or detention as soon as possible after the commencement.

(3) On and after the commencement, the child is taken to have been taken into provisional protection under section 51 of this Act.

(4) For subsection (3):

(a) the provisional protection is taken to be for a period of 72 hours starting from the start of the custody or detention; and

(b) anything done for the child for the custody or detention is taken to have been done for the provisional protection.

Example

If the child has been detained for 24 hours immediately before the commencement, the CEO must, subject to any other provisions of this Act, return the child to a parent of the child within 48 hours after the commencement.

(5) Compliance with subsection (2) is taken to be compliance with:

(a) section 52(4) of this Act; and

(b) section 11(5) of the Welfare Act.

319 Transfer of proceedings and records

(1) The following must be transferred to the family matters jurisdiction of the Local Court after the commencement:

(a) proceedings and records of the Family Matters Court;

(b) proceedings and records of applications under section 11A of the Welfare Act.

(2) The Local Court must deal with the proceedings and records as if:

(a) the Welfare Act had not been repealed; and

(b) for proceedings and records of the Family Matters Court:

(i) the Local Court were the Family Matters Court; and

(ii) an adjournment granted by the Family Matters Court and any related interim order were granted or made by the Local Court in exercising the family matters jurisdiction.

(3) An appeal to the Supreme Court under the Welfare Act that has not been decided before the commencement must be dealt with by the Supreme Court as if the Welfare Act had not been repealed.

(4) However, the application of the Welfare Act under subsections (2) and (3) is subject to the following changes:

(a) if the Minister administering the Welfare Act would otherwise have been given custody of a child because of the application – the CEO must be given daily care and control of the child instead;

(b) if the Minister administering the Welfare Act would otherwise have been given guardianship of a child because of the application – the CEO must be given parental responsibility for the child instead;

(c) if an authorised person would otherwise have powers or functions under the Welfare Act because of the application – an authorised officer has the powers or functions instead.

320 Orders and directions

An order or direction in force immediately before the commencement has effect as specified in the following table:

An order or direction made under this provision of the Welfare Act:	has effect as if it were:
section 11A	a temporary protection order
section 43(5)(a)	a protection order specifying a supervision direction
section 43(5)(b)	a protection order specifying a daily care and control direction
section 43(5)(c)	a protection order specifying a short-term parental responsibility direction
section 43(5)(d)	a protection order specifying a long-term parental responsibility direction
section 62G	a decision of the Court under section 159 of this Act
section 62L	an order of the Court under section 164 of this Act
section 62Q	an order of the Court under section 169 of this Act
section 62R	an interim order of the Court under section 170 of this Act

321 Ministerial decisions

A decision in force under section 62C of the Welfare Act immediately before the commencement has effect as if it were a decision under section 155 of this Act.

322 Interstate orders

(1) This section applies to a decision or order that:

(a) was an interstate order covered by section 62W(1)(a), (b) and (c) of the Welfare Act immediately before the commencement; and

(b) had not been filed or registered under that section immediately before the commencement.

(2) If the interstate order relates to the transfer of a child protection order:

(a) a copy of the interstate order and child protection order must be filed as if they were covered by section 171(1) of this Act; and

(b) the transfer must be registered under section 173 of this Act.

(3) If the interstate order relates to the transfer of a child protection proceeding:

(a) a copy of the interstate order and each related interim order must be filed under section 172(1) of this Act; and

(b) the transfer must be registered under section 173 of this Act.

(4) A registration for the transfer of a child protection order or proceeding in force under section 62W of the Welfare Act immediately before the commencement has effect as if the transfer had been registered under section 173 of this Act.

Division 3 Transitional matters for Part 3.2

323 Consent for child's employment

(1) A consent for the employment of a child in force under section 92 or 93 of the Welfare Act immediately before the commencement continues until the employment ceases.

(2) While the consent is in force:

(a) the Welfare Act has effect for the consent as if:

(i) that Act had not been repealed; and

(ii) a reference to the Minister in that Act had included a reference to the CEO; and

(b) Part 3.2 of this Act does not apply to the employment.

(3) In this section:

commencement means the commencement of section 311.

Welfare Act means the *Community Welfare Act* as in force immediately before the commencement.

Division 5 Other transitional matters

329 Definitions

In this Division:

commencement means the commencement of section 311.

Welfare Act means the *Community Welfare Act* as in force from time to time before the commencement.

330 Agreement with parent

An agreement in force under section 59 of the Welfare Act immediately before the commencement has effect for the remainder of its term as if that Act had not been repealed.

331 References relating to *Community Welfare Act*

(1) This section applies to a provision in any order or direction of a court or any other instrument:

(a) made under or for the Welfare Act; and

(b) was in force immediately before the commencement.

(2) Except as otherwise provided in this Part, the provision has effect for the remainder of its term as if, in the provision:

(a) a reference to the Minister had included a reference to the CEO; and

(b) a reference to the Family Matters Court had included a reference to the Local Court exercising the family matters jurisdiction; and

(c) a reference to an authorised person had included a reference to an authorised officer; and

(d) a reference to a child in need of care had included a reference to a child in need of protection; and

(e) a reference to a child who is in the care or under the responsibility of the Minister administering the Welfare Act had included a reference to a child who is in the CEO's care.

332 Section 12 of *Interpretation Act*

This Part does not limit the effect of section 12 of the *Interpretation Act* in relation to any matters arising from the repeal of the Welfare Act.

333 Transitional regulations

(1) The regulations may make provision about a matter for which:

(a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the Welfare Act to this Act; and

(b) this Act does not make provision or sufficient provision.

(2) A regulation under subsection (1) must not have effect before:

(a) if the regulation relates to provisions of this Act that commence at different times – the commencement of any of the provisions that first commences; or

(b) otherwise – the commencement of the provisions of this Act to which the regulation relates.

(3) To the extent to which the regulation has retrospective operation, it must not operate to the disadvantage of a person (other than the Territory or a Territory authority) by decreasing the person's rights or imposing liabilities on the person.

Part 5.6 Transitional matters for other amending Acts

Division 1 Transitional matters for Care and Protection of Children Amendment Act 2009

334 Application

(1) Section 26 as amended by the amending Act applies in relation to an obligation to make a report under that section on or after the commencement, whether the circumstances giving rise to that obligation occurred before, on or after the commencement.

(2) In this section:

amending Act means the *Care and Protection of Children Amendment Act 2009*.

commencement means the commencement of the amending Act.

Division 2 Transitional matters for Care and Protection of Children (Children's Commissioner) Amendment Act 2011

Note for Division 2

Part 5.1 was repealed by the Children's Commissioner Act. This Division deals with Part 5.1 as in force before it was repealed.

335 Extended application of Part 5.1

(1) Part 5.1 as amended by the amending Act applies to the following:

(a) a matter to which a complaint relates that occurred before the commencement;

(b) a matter to which an investigation relates that occurred before the commencement;

(c) for paragraph (a) or (b), a person who was a vulnerable child before the commencement.

(2) However, subsection (1) has effect subject to section 265 in relation to an investigation of a complaint.

(3) In this section:

amending Act means the *Care and Protection of Children (Children's Commissioner) Amendment Act 2011*.

commencement means the commencement of Part 2 of the amending Act.

Division 3 Transitional matters for Care and Protection of Children (Legal Representation and Other Matters) Act 2013

336 Legal representation

(1) Part 2.3, Division 6A applies in relation to proceedings commenced after the commencement of section 4 of the *Care and Protection of Children (Legal Representation and Other Matters) Act 2013* (the ***commencement date***).

(2) Section 146 as in force immediately before the commencement date continues to apply in relation to proceedings that were commenced before the commencement date.

Schedule Repealed Acts

section 311

Community Welfare Act 1983	Act No. 76 of 1983
Community Welfare Amendment Act 1989	Act No. 70 of 1989
Community Welfare Amendment Act 1995	Act No. 54 of 1995
Community Welfare Amendment Act 1999	Act No. 6 of 1999
Community Welfare Amendment Act 2002	Act No. 61 of 2002

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Care and Protection of Children Act 2007* (Act No. 37, 2007)**

Assent date	12 December 2007
Commenced	Ch 1 and pts 3.3 and 5.1: 7 May 2008 (*Gaz* G18, 7 May 2008, p 4); Ch 2 (exc pt 2.1, div 6 and s 127), Ch 3, pts 3.1 and 3.2 (exc s 187) and Ch 5, pts 5.2 to 5.6: 8 December 2008 (*Gaz* G47, 26 November 2008, p 6); Ch 4: 9 June 2009 (*Gaz* S27, 1 June 2009); Ch 2, pt 2.1, div 6: 18 August 2010 (*Gaz* S43, 18 August 2010); s 187: 1 July 2011 (*Gaz* S32, 20 June 2011); s 127: nc

***Local Government (Consequential Amendments) Act 2008* (Act No. 28, 2008)**

Assent date	14 November 2008
Commenced	1 July 2008 (s 2)

***Care and Protection of Children Amendment Act 2009* (Act No. 23, 2009)**

Assent date	1 September 2009
Commenced	1 September 2009

***Statute Law Revision Act 2009* (Act No. 25, 2009)**

Assent date	1 September 2009
Commenced	16 September 2009 (*Gaz* G37, 16 September 2009, p 3)

***Health Practitioner (National Uniform Legislation) Implementation Act 2010* (Act No. 18, 2010)**

Assent date	20 May 2010
Commenced	1 July 2010 (s 2)

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010* (Act No. 40, 2010)**

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

***Care and Protection of Children (Children's Commissioner) Amendment Act 2011* (Act No. 9, 2011)**

Assent date	18 April 2011
Commenced	1 July 2011 (*Gaz* S32, 20 June 2011)

***Private Hospitals and Nursing Homes Amendment Act 2011* (Act No. 16, 2011)**

Assent date	20 May 2011
Commenced	20 May 2011

***Statute Law Revision Act 2011* (Act No. 30, 2011)**

Assent date	31 August 2011
Commenced	21 September 2011 (*Gaz* G38, 21 September 2011, p 5)

***Statute Law (Miscellaneous Provisions) Act 2011* (Act No. 44, 2011)**

Assent date	21 December 2011
Commenced	27 January 2012 ((other than amdts to *Darwin Port Corporation Act* and *Marine Act* listed in the Sch to Act) *Gaz* S3, 27 January 2012))

***Education and Care Services (National Uniform Legislation) Act 2011* (Act No. 46, 2011)**

Assent date	21 December 2011
Commenced	1 January 2012 (*Gaz* S76, 23 December 2011)

***Care and Protection of Children Amendment (Information Sharing) Act 2012* (Act No. 9, 2012)**

Assent date	27 April 2012
Commenced	1 July 2012 (*Gaz* G24, 13 June 2012, p 4)

***Health Practitioner (National Uniform Legislation) Implementation Act 2012* (Act No. 17, 2012)**

Assent date	22 May 2012
Commenced	1 July 2012 (s 2)

***Care and Protection of Children Amendment (Legal Representation and Other Matters) Act 2013* (Act No. 32, 2013)**

Assent date	18 December 2013
Commenced	1 January 2014 (*Gaz* S72, 23 December 2013)

***Children's Commissioner Act 2013* (Act No. 33, 2013)**

Assent date	18 December 2013
Commenced	1 January 2014 (*Gaz* S72, 23 December 2013)

***Care and Protection of Children Amendment (Charter of Rights) Act 2014* (Act No. 2, 2014)**

Assent date	20 March 2014
Commenced	25 June 2014 (*Gaz* G25, 25 June 2014, p 1)

***Local Government Amendment Act 2014* (Act No. 19, 2014)**

Assent date	2 June 2014
Commenced	s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014 (s 2)

***Correctional Services (Related and Consequential Amendments) Act 2014* (Act No. 27, 2014)**

Assent date	4 September 2014
Commenced	9 September 2014 (*Gaz* S80, 9 September 2014, p 2)

***Care and Protection of Children Amendment Act 2015* (Act No. 3, 2015)**

Assent date	25 March 2015
Commenced	1 July 2015 (*Gaz* G22, 3 June 2015, p 1)

***Education Act 2015* (Act No. 28, 2015)**

Assent date	10 December 2015
Commenced	pt 6, divs 2 and 4 and pt 7: 1 April 2016; pt 3: 1 July 2016; rem: 1 January 2016 (s 2)

***Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016)**

Assent date	6 April 2016
Commenced	1 May 2016 (*Gaz* S34, 29 April 2016)

***Statute Law Revision Act 2017* (Act No. 4, 2017)**

Assent date	10 March 2017
Commenced	12 April 2017 (*Gaz* G15, 12 April 2017, p 3)

3 LIST OF AMENDMENTS

s 5	amd No. 46, 2011, s 19; No. 9, 2012, s 4; No. 33, 2013, s 62
s 4	amd No. 32, 2013, s 19
s 13	amd No. 28, 2008, s 3; No. 18, 2010, s 89; No. 16, 2011, s 19; No. 9, 2011, s 4; No. 46, 2011, s 20; No. 44, 2011, s 27; No. 9, 2012, s 5; No. 17, 2012, s 55; No. 33, 2013, s 63; No. 19, 2014, s 26; No. 3, 2015, s 4; No. 28, 2015, s 195; No. 9, 2016, s 51
s 22	amd No. 32, 2013, s 11
s 23	amd No. 3, 2015, s 5
s 24	amd No. 9, 2011, s 5; No. 33, 2013, s 64
s 26	sub No. 23, 2009, s 3
ss 27 – 29	amd No. 23, 2009, s 6
s 30	amd No. 23, 2009, s 4; No. 46, 2011, s 21
s 31	amd No. 32, 2013, s 19
s 32	amd No. 23, 2009, s 6
s 34	amd No. 9, 2011, s 23; No. 46, 2011, s 22; No. 9, 2012, s 6
s 37	amd No. 9, 2011, s 6
s 43	amd No. 33, 2013, s 65
s 44	amd No. 46, 2011, s 23
s 51	amd No. 3, 2015, s 6
s 52	amd No. 32, 2013, s 12
s 53	amd No. 3, 2015, s 7
s 57	amd No. 32, 2013, s 13; No. 27, 2014, s 57
s 60	amd No. 44, 2011, s 27; No. 32, 2013, s 14; No. 4, 2017, s 34
s 63	amd No. 32, 2013, s 15; No. 9, 2016, s 52
ch 2	
pt 2.2	
div 1A hdg	ins No. 2, 2014, s 4
s 68A	ins No. 2, 2014, s 4
ch 2	
pt 2.2	
div 4A hdg	ins No. 32, 2013, s 7
ss 83A – 83B	ins No. 32, 2013, s 7
s 84	amd No. 32, 2013, s 8
ss 84A - 84D	ins No. 32, 2013, s 9
s 85	sub No. 32, 2013, s 9
s 87	amd No. 9, 2016, s 53
s 88	sub No. 9, 2016, s 54
ch 2	

pt 2.3	
div 2 hdg	sub No. 9, 2016, s 54
s 89	sub No. 9, 2016, s 54
s 90	amd No. 9, 2016, s 55
s 91	amd No. 9, 2016, s 56
s 103	amd No. 3, 2015, s 8
s 104	amd No. 40, 2010, s 118
s 106	amd No. 3, 2015, s 9
s 108	amd No. 32, 2013, s 16
s 109	amd No. 3, 2015, s 10
s 110	amd No. 3, 2015, s 11
s 124	amd No. ,2013, s 19
s 126	amd No. 9, 2012, s 7
s 135	amd No. 32, 2013, s 17
s 137	amd No. 32, 2013, s 19
ch 2	
pt 2.3, div 4	
sdiv 4 hdg	ins No. 3, 2015, s 12
ss 137A – 137M	ins No. 3, 2015, s 12
s 138	amd No. 3, 2015, s 13
s 139	amd No. 3, 2015, s 14
s 143	amd No. 3, 2015, s 15
ch 2	
pt 2.3	
div 6A hdg	ins No. 32, 2013, s 4
ss 143A – 143E	ins No. 32, 2013, s 4
s 146	rep No. 32, 2013, s 5
s 173	amd No. 9, 2016, s 57
s 175	amd No. 9, 2016, s 58
s 176	amd No. 9, 2016, s 59
s 177	amd No. 25, 2009, s 10
s 179	amd No. 9, 2016, s 60
s 185	amd No. 46, 2011, s 24; No. 28, 2015, s 195
s 195	amd No. 30, 2011, s 3
s 199	amd No. 28, 2015, s 195
s 204	amd No. 32, 2013, s 18
s 211	amd No. 9, 2011, s 23; No. 46, 2011, s 25
ch 4 hdg	rep No. 46, 2011, s 26
ch 4	
pt 4.1 hdg	rep No. 46, 2011, s 26
ss 223 – 227	rep No. 46, 2011, s 26
ch 4	
pt 4.2 hdg	rep No. 46, 2011, s 26
ss 228 – 229	rep No. 46, 2011, s 26
ch 4	
pt 4.3 hdg	rep No. 46, 2011, s 26
ss 230 – 232	rep No. 46, 2011, s 26
s 233	amd No. 25, 2009, s 10
	rep No. 46, 2011, s 26
ss 234 – 240	rep No. 46, 2011, s 26
ch 4	
pt 4.4 hdg	rep No. 46, 2011, s 26
ss 241 – 246	rep No. 46, 2011, s 26
ch 4	
pt 4.5 hdg	rep No. 46, 2011, s 26
ss 247 – 250	rep No. 46, 2011, s 26

ch 4	
pt 4.6 hdg	rep No. 46, 2011, s 26
ss 251 – 253	rep No. 46, 2011, s 26
ch 4	
pt 4.7 hdg	rep No. 46, 2011, s 26
ss 254 – 256	rep No. 46, 2011, s 26
ch 4	
pt 4.8 hdg	rep No. 46, 2011, s 26
s 257	rep No. 46, 2011, s 26
s 258	amd No. 9, 2011, s 7
ss 260 – 261	sub No. 9, 2011, s 8
s 263	amd No. 9, 2011, s 23
s 264	amd No. 9, 2011, s 9
s 266	amd No. 9, 2011, s 10
ch 5	
pt 5.1 hdg	rep No. 33, 2013, s 66
ch 5	
pt 5.1	
div 1 hdg	rep No. 33, 2013, s 66
ss 258 – 262	rep No. 33, 2013, s 66
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div 2 hdg	rep No. 33, 2013, s 66
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pt 5.1	
div 2	
sdiv 1 hdg	rep No. 33, 2013, s 66
ss 263 – 265	rep No. 33, 2013, s 66
ch 5	
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div 2	
sdiv 2 hdg	rep No. 33, 2013, s 66
ss 266 – 268	rep No. 33, 2013, s 66
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sdiv 3 hdg	rep No. 9, 2011, s 17
ch 5	
pt 5.1	
div 3 hdg	ins No. 9, 2011, s 15
	rep No. 33, 2013, s 66
ss 269 – 270	sub No. 9, 2011, s 16
	rep No. 33, 2013, s 66
pt 5.1	
div 4 hdg	ins No. 9, 2011, s 16
	rep No. 33, 2013, s 66
s 271	amd No. 40, 2010, s 118
	sub No. 9, 2011, s 16
	rep No. 33, 2013, s 66
s 272	sub No. 9, 2011, s 16
	rep No. 33, 2013, s 66
ch 5	
pt 5.1	
div 5 hdg	ins No. 9, 2011, s 16
	rep No. 33, 2013, s 66
s 273	amd No. 9, 2011, s 18
	rep No. 33, 2013, s 66
ss 274 – 277	rep No. 32, 2013, s 66

ch 5	
pt 5.1	
div 6 hdg	renum No. 9, 2011, s 11
	rep No. 33, 2013, s 66
s 278	amd No. 9, 2011, s 19; No. 44, 2011, s 27
	rep No. 33, 2013, s 66
s 279	amd No. 9, 2011, s 20
	rep No. 33, 2013, s 66
ch 5	
pt 5.1	
div 7 hdg	renum No. 9, 2011, s 12
	rep No. 33, 2013, s 66
ss 280 – 281	amd No. 9, 2011, s 23
	rep No. 33, 2013, s 66
ch 5	
pt 5.1	
div 8 hdg	renum No. 9, 2011, s 13
	rep No. 33, 2013, s 66
s 283	amd No. 9, 2011, s 23
	rep No. 33, 2013, s 66
s 284	rep No. 33, 2013, s 66
ch 5	
pt 5.1	
div 9 hdg	renum No. 9, 2011, s 14
	rep No. 33, 2013, s 66
ss 285 – 290	rep No. 33, 2013, s 66
s 291	amd No. 40, 2010, s 118
	rep No. 33, 2013, s 66
ss 292 – 293	rep No. 33, 2013, s 66
ch 5	
pt 5.1A hdg	ins No. 9, 2012, s 8
ch 5	
pt 5.1A	
div 1 hdg	ins No. 9, 2012, s 8
ss 293A – 293B	ins No. 9, 2012, s 8
s 293C	ins No. 9, 2012, s 8
	amd No. 28, 2015, s 195
pt 5.1A	
div 2 hdg	ins No. 9, 2012, s 8
ss 293D – 293E	ins No. 9, 2012, s 8
pt 5.1A	
div 3 hdg	ins No. 9, 2012, s 8
ss 293F – 293J	ins No. 9, 2012, s 8
s 299	amd No. 33, 2013, s 67
s 301	amd No. 3, 2015, s 16
s 304	amd No. 32, 2013, s 10
s 308	amd No. 32, 2013, s 19
ch 5	
pt 5.5	
div 4 hdg	rep No. 46, 2011, s 26
ss 324 – 328	rep No. 46, 2011, s 26
ch 5	
pt 5.6 hdg	exp No. 37, 2007, s 345
	ins No. 23, 2009, s 5
	amd No. 9, 2011, s 21

ch 5	
pt 5.6	
div 1 hdg	ins No. 9, 2011, s 21
s 334	exp No. 37, 2007, s 345
	ins No. 23, 2009, s 5
ch 5	
pt 5.6	
div 1 hdg	exp No. 37, 2007, s 345
ch 5	
pt 5.6	
div 2 hdg	ins No. 9, 2011, s 22
ch 5	
pt 5.6	
div 2 note	ins No. 33, 2013, s 68
s 335	exp No. 37, 2007, s 345
	ins No. 9, 2011, s 22
ch 5	
pt 5.6	
div 2 hdg	exp No. 37, 2007, s 345
ss 336 – 344	exp No. 37, 2007, s 345
ch 5	
pt 5.6	
div 3 hdg	exp No. 37, 2007, s 345
s 345	exp No. 37, 2007, s 345
pt 5.6	
div 3 hdg	ins No. 32, 2013, s 6
s 336	ins No. 32, 2013, s 6